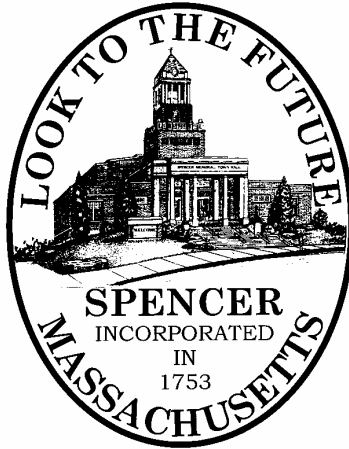


ZONING BY-LAWS

OF



TOWN OF SPENCER

Adopted June 17, 1985

Updated as of 5/8/2003

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SPENCER, MASSACHUSETTS

ZONING BY-LAWS

SECTION 1. PURPOSE AND APPLICATION

1.1 PURPOSE

To promote the general welfare of the Town of Spencer, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land within the town, to retain our natural resources, to protect, conserve and increase the value of property, and for the purposes set forth in Section 2A of Chapter 808 of the Acts of 1975, the Town of Spencer, under the authority of Chapter 40A of the General Laws, as amended, does hereby enact this By-Law and the inspection, construction, alteration, repair, height, area, location, and use of buildings and the use of land throughout the Town of Spencer are hereby regulated as herein provided.

1.2 AMENDMENTS

All amendments to this By-Law shall be made in a manner conforming with the Section 6 of Chapter 40A of the General Laws.

1.3 VALIDITY

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision hereof.

1.4 OTHER BY-LAWS

Where this By-Law imposes a greater restriction upon the use of land or the use or erection of buildings in the Town than is imposed by other By-Laws of the Town, the provisions of this By-Law shall control.

SECTION 2. DEFINITIONS

In this By-Law, the following terms, unless a contrary meaning is required by the context, or is specifically prescribed, shall have the following meanings. Words used in the present tense include the future, and the plural includes the singular; the word “lot” includes the word “plot”; the word ‘shall’ is intended to be mandatory; “occupied” or “used” shall be considered as though followed by the words “or intended, arranged or designed to be used or occupied”. The word “person” includes a corporation as well as an individual.

ACCESSORY USE OR BUILDING: A use or building which is subordinate and customarily incidental to the principle use or building and located on the same lot as the principle use or building, except as allowed under table 5.4 (I) 12. An accessory use or building to scientific research development or related production does not have to be located on the same lot as the principle use or building.

ARTISAN: One as a carpenter, plumber, or tailor trained to manual dexterity, or skilled in a trade.

AUTOMOTIVE PROCESSING: A facility for the distribution of new vehicles by way of train, truck or airplane where vehicles are prepared for delivery to dealers, including installation of accessory items and body repairs incidental to damage from shipment. (Added 6/17/91 Art. 13)

BASEMENT: That portion of a building which is partly below and partly above grade, and having at least one-half (1/2) of its height above grade.

BUILDING: A combination of materials having a roof and forming a shelter for persons, animals or property. The word “building” shall be construed as though followed by the words “or structure or part or parts thereof”.

BUILDING HEIGHT: The vertical distance measured from the average finished grade of the ground adjoining the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the average height between eaves and ridge for gable, hip and gambrel roofs.

BUILT OR ERECTED: The words “built” and “erected” shall each contain the other and shall include the words “constructed”, “reconstructed”, “altered”, “enlarged”, “moved”, and any others of like significance.

CAMP: Land or buildings used primarily for recreational or recuperative purposes by organizations or groups of people, whether or not conducted for profit, but does not include dwellings used on a seasonal basis for personal or family purposes.

CELLAR: That portion of a building partially underground, having one-half (1/2) or more of its clear height below grade.

CEMETERY: Land used for the burial of the dead and dedicated for cemetery purposes including columbarium, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.

CLUSTER DEVELOPMENT: An option which permits an applicant to build single-family dwellings with reduced lot area and frontage requirements to create a development in which the buildings and accessory uses are clustered together in one or more groups with adjacent common open land.

CRAFTSPERSON: A skilled worker who practices a craft; a skill or ability especially in handwork or the arts.

DWELLING: A building providing complete, independent living facilities for one or more families.

DWELLING, ATTACHED MULTI-FAMILY: A building consisting of not less than three nor more than four dwelling units designed and erected in a row.

DWELLING, MULTI-FAMILY: A building intended and designed to be occupied exclusively by three or more families living independently of each other.

DWELLING, SINGLE FAMILY: A building intended and designed exclusively to be occupied by a single family.

DWELLING, TWO FAMILY: A building intended and designed to be occupied exclusively by two families living independently of each other.

DWELLING UNIT: One or more rooms providing complete living facilities for one family including permanent provisions for sleeping, eating, cooking and sanitation.

EMERGENCY MEDICAL AMBULANCE SERVICE: (Services utilized in responding to an emergency or provided during the emergency or interfacility transport of patients to appropriate healthcare facilities), emergency response, primary ambulance response, pre-hospital emergency care, sick or injured individuals by ambulance. (Added 5/10/2001 Art. 6)

FAMILY: One or more persons occupying a dwelling unit and living as a single housekeeping unit but not including a group of more than five persons who are not related by blood, marriage, or legal adoption. For purposes of this By-Law, sororities, fraternities and other similar communal arrangements shall not constitute a family.

FARM: A tract of land in separate ownership devoted primarily to agricultural use. Includes necessary personnel, structures, buildings, vehicles and equipment but not residential or commercial structures other than those directly related to farm operation.

FREIGHT TERMINAL: A facility for the storage and shipping of finished goods, used in commerce or industry, including automobiles and automotive products, shipped by train, truck or airplane, whether such storage and processing be in an enclosed facility or not.
(Added 6/17/91 Art. 13)

FRONTAGE STREET: A street which provides the required lot frontage for a building. When a lot is bounded by more than one street, any one of them but only one, may be designated as the frontage street by the owner, provided that the street meets the frontage requirement and that the principal permitted building on the lot is numbered on such frontage street. However, in the case of a lot bounded by two streets forming an interior angle of more than 135 degrees, their combined frontage between lot lines may be used to satisfy the lot frontage requirements.

FUR ANIMAL: Any animal usually kept and raised for the use and sale of skins or fur.

GARAGE, PRIVATE: Any accessory building or portion of a main building for the storing of not more than four automobiles with no provisions for repairing or servicing of such vehicles for profit.

GARAGE, PUBLIC: A building for the storage, repair or servicing of motor vehicles (not including auto body repairs) and may include the dispensing of gasoline, oil or similar products for such vehicles.

GAS STATION: See Garage, Public.

GRANDFATHERED USE: See non-conforming use.

HABITABLE SPACE: Those areas within the exterior walls of a dwelling which have headroom of not less than seven feet, measured vertically upward from the top of the finished floor, but excluding basement areas and excluding areas in any accessory structure attached to any dwelling.

HAZARDOUS WASTE: Any solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical, or infectious characteristics;

- (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or:
- (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

HOME OCCUPATION: Any use customarily conducted for profit by the inhabitants within a dwelling or a building accessory thereto, provided such use is clearly incidental and secondary to the use of the building for dwelling purposes and does not change the residential character thereof.

HOTEL: Same as “MOTEL”.

JUNK YARD: Land or structure used commercially for collecting, storing or selling wastepaper, rags, scrap metal or discarded material; or for collecting, dismantling, storing, salvaging or selling inoperative machinery or vehicles or parts thereof.

LODGING HOUSE: A building where lodgings are let, with or without meals, to four and not more than twenty persons.

LOT: An area of land in one ownership with definite boundaries ascertainable by recorded deed or plan and used or set aside and available for use as the site of one or more buildings or for any other definite purpose.

LOT AREA: Area within a lot, including land over which easements have been granted, but not including any land within the limits of a street upon which such a lot abuts, even if fee to such street is in the owner of the lot.

LOT CORNER: A lot which has an interior angle of less than 135 degrees at the intersection of two street lines. A lot abutting a curbed street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135 degrees.

LOT FRONTAGE: A continuous portion of the boundary between a lot and an abutting street, between lot lines or, in the case of a corner lot, between a lot line and the intersection of street lines or of street lines extended.

LOT LINE, FRONT: The property line dividing a lot from a street right-of-way.

LOT LINE, REAR: A line separating a lot from other lots or from land in a different ownership, being the boundary of a lot which is opposite or approximately opposite the frontage street. Where, because of irregular lot shape, the building inspector and the lot owner cannot agree as to whether a lot line is a side or rear line, it shall be considered a rear line.

LOT LINE, SIDE: Any lot not a front or rear lot line.

LOT WIDTH: The width of any lot shall be measured wholly within such lot as the shorter distance between side lot lines at the required yard depth.

LOW LEVEL RADIOACTIVE WASTE: Radioactive waste not classified as high level radioactive waste, transuranic waste, spent nuclear fuel, or by product material as defined in section 11e (2) of the Atomic Energy Act of 1954.

MOBILE HOME: A dwelling unit built on a chassis, containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or permanent foundation for either temporary or permanent living quarters.

MOBILE HOME PARK: Premises which have been planned and improved for the placement of two or more mobile homes.

MOTEL: A building containing rooms for transient guests providing living, sleeping and toilet facilities with provision for serving food in a public dining room but with no provision for cooking in rooms occupied by guests.

NONCONFORMING BUILDING: A building lawfully existing at the time of the enactment or subsequent amendment of the By-Law, which does not conform to the regulations of the district in which it is situated.

NONCONFORMING USE: A use lawfully existing at the time of the enactment or subsequent amendment of this By-Law which does not conform to the regulations of the district in which it is situated.

PLANNED SHOPPING CENTER: A building or group of buildings -- including associated access drives, parking and loading areas, open space and landscaped buffers -- which is planned, designed, developed, owned and managed as a unified commercial complex serving the community. Any use which is permitted in the zone may occupy space within a Planned Shopping Center at any time, and any use which is permitted only by Special Permit from the Board of Appeals must first obtain such a permit. Individual uses may be of any size within the overall limits of the project. Any use prohibited from the zone is also prohibited from a Planned Shopping Center.

In order to qualify as a Planned Shopping Center, a site plan, prepared by a Registered Professional Architect, Engineer or Landscape Architect, shall be presented to the Building Inspector. Within three days the Building Inspector shall refer the site plan to the Planning Board for its review. Within 30 days or such further period as the Building Inspector and the applicant may agree to in writing, the Planning Board shall issue its advisory opinion to the Building Inspector. The site plan of a project must meet the following standards:

- 1) Leave a thickly landscaped buffer zone of at least 50 feet adjacent to or facing residential uses or districts;
- 2) Be no more than 35 feet high;
- 3) Occupy a lot of at least five acres with at least 400 feet of frontage on a state highway or major artery;
- 4) Cover no more than 25 percent of the lot with building;

- 5) Have a floor area ratio (FAR) of no more than 0.35;
- 6) Not increase the noise on abutting residential properties to more than 55 DBA, as determined by a professional engineer;
- 7) Provide at least 5 ½ parking spaces per 1000 square feet of Gross Leasable Area (GLA);
- 8) Have a professionally designed and engineered site plan which minimizes environmental impact including erosion and siltation and changes to ground and surface water levels, quantity or quality. Access roads, utilities and site drainage shall be designed and constructed in accordance with the Planning Board's rules and regulations governing subdivision;
- 9) Provide safe vehicular access to and from a numbered state highway or major arterial road and not increase the Average Daily Traffic (ADT) of roads within 1000 feet of the site by more than 50 percent nor reduce the Level of Service at intersections within the same area to less than a "C" standard as determined by a professional traffic manager;
- 10) Provide for private disposal of solid waste so as not to be a burden on the town;
- 11) Provide for private security for the project including 24-hour security service and a direct alarm to the Spencer Police Department so as not to be a burden on the town;
- 12) Provide fire hydrants, fire lanes, and such other fire preventative and firefighting aids as may be required, etc. to the satisfaction of the Spencer Fire Chief. (Added 1/30/89 Art. 4)

REPAIR SHOP, RESIDENTIAL DISTRICT: To mean repair of small appliances.

SOLAR ENERGY CONVERSION SYSTEM: Any structure, object or similar device which utilizes the sun's rays to produce, operate or otherwise convert said energy into another form of energy (for personal use).

SOLID WASTE: Any garbage, refuse, sludge from a wastewater treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, including community activities. Solid waste shall be classified non-hazardous or hazardous.

STORAGE WAREHOUSE BUILDINGS: Units designed and used solely for storage, not for habitation. (Added 3/18/99 Art. 37)

STORY: That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half of such portion vertically is below average finished grade of the ground adjoining such building.

STORY, HALF: That portion of a building next beneath a sloping roof and in which there are less than four feet vertically between the top of the floor and the intersection of the bottoms of the rafters with the interior faces of the walls.

STREET: A way which affords the principal means of access to abutting properties, provided such way is either a public way, or a way which the Town Clerk certifies is maintained and used as a public way, or a way shown on a plan approved and endorsed in accordance with the subdivision control law, or a way in existence when the subdivision control law became effective in Spencer having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting hereon, or served thereby, and for the installation of municipal services to serve such land and the buildings erected, or to be erected, thereon.

STRUCTURE: Anything constructed or erected, the use of which requires a fixed location on the ground, or attachment to something located on the ground, including buildings, mobile homes, billboards, tanks, or the like, or the parts thereof, and swimming pools. However, this definition does not include a boundary wall or fence less than six feet in height above the mean finished grade of the adjoining ground.

SWIMMING POOL: Any pool having a depth of 24 inches or greater and surface area of 250 square feet or greater.

TRAILER: A vehicle with motor power or designed to be drawn by a motor vehicle which is used for human habitation or for the carrying of persons.

YARD: An open space on a lot unoccupied by a building or structure or such parts thereof as covered or uncovered porches, steps, cornices, eaves and other projections; provided however that fences, gates or security stations, yard accessories, ornaments and furniture, and customary summer awnings are permitted in any yard but shall be subject to height limitations. Yard depth shall be measured from the street or lot line to the nearest point on a building in a line perpendicular or normal to such lot or street line.

YARD, FRONT: A yard extending between lot sidelines across the lot adjacent to each street it abuts.

YARD, REAR: A yard extending between the sidelines of a lot adjacent to the rear line of the lot.

YARD, SIDE: A yard extending along each sideline of a lot between front and rear yards.

WIND ENERGY CONSERVATION SYSTEM: A device operated by the wind acting on oblique vanes, sails or similar devices to produce or otherwise develop or convert wind power into another form of energy (for personal use).

SECTION 3. ESTABLISHMENT OF DISTRICTS

3.1 ZONING DISTRICTS

The Town of Spencer is hereby divided into the following districts:

3.1.1 Residents Districts

R-10 Central Residence
R-22.5 Open Residence
R-45 Rural Residence

3.1.2 Business Districts

B-C Central Business
B-L Local Business
COM. Commercial

3.1.3 Industrial Districts

IND Industrial

3.2 LOCATION OF DISTRICTS

Said districts are located and bounded as shown on a map entitled “Zoning Map of the Town of Spencer”, dated April 1977, which shall be on file in the office of the Town Clerk. The Zoning Map, and any amendments thereto, together with all explanatory matter thereon, are hereby made part of this By-Law. Said Zoning Map shall be revised from time to time by the Planning Board to show the location and boundaries of zoning districts as voted by the Town.

3.3 INTERPRETATION OF DISTRICT BOUNDARIES

Where a district boundary is indicated as within or parallel to a street, highway, railroad right-of-way, water course or town municipal boundary such district boundary shall be construed as the centerline, or being parallel to the centerline of such street, highway, railroad right-of-way, water course or town municipal boundary. Whenever any dispute arises on district boundaries as to the exact location of a district boundary line, the location of such line shall be determined by the Zoning Board of Appeals.

SECTION 4. NONCONFORMING BUILDING AND USES

4.1 APPLICABILITY

The lawful use of any building or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such building or use does not conform with the provisions of this By-Law, subject to the following conditions and exceptions:

4.1.1 A single or two family building may be altered, reconstructed, extended or structurally changed provided that such alteration, reconstruction, extension or structural change does not increase the non-conforming nature of said building.

4.1.2 Non-conforming buildings or uses may be extended, altered or changed, provided, that no such extension, alteration or change shall be permitted unless the Board of Appeals issues a special permit upon finding that such extension, alteration or change shall not be substantially more detrimental to the neighborhood than the existing non-conforming building or use.

4.1.3 If a non-conforming use of any building or land is changed to a conforming use it shall not thereafter revert to a non-conforming use.

4.1.4 Any non-conforming use of a building or land which has been discontinued for a period of two years shall not be re-established and any future use shall conform with this By-Law.

4.1.5 Upon the issuance of a special permit by the Board of Appeals, any non-conforming building damaged by fire, storm, or other causes may be rebuilt as a non-conforming building. Any restoration not completed within two years after such a catastrophe must conform to the provisions of this By-Law.

SECTION 5. USE REGULATIONS

5.1 APPLICABILITY

Except as may be specified elsewhere in this By-Law, no building shall be erected or used and no land shall be used except as set forth in the accompanying Table of Use Regulations, Section 5.4.

5.2 FORBIDDEN IF NOT REQUIRED

Any building or use of premises not herein expressly permitted is hereby expressly forbidden.

5.3 USE DESIGNATIONS

Symbols employed in the Table of Use Regulations shall mean the following:

Y.....A permitted use

N.....An excluded or prohibited use

SP.....A use permitted by special permit from the Board of Appeals

(Permitted uses are automatically allowed when a building permit has been obtained from the Building Inspector.)

5.4 TABLE OF USE REGULATIONS

	RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
	R-45	R-22.5	R-10	BC	BL	COM	IND
PRINCIPAL USES							
A. Residential Uses							
1. Single Family Dwelling	Y	Y	Y	N	N	N	N
2. Two Family Dwelling	SP	SP	SP	N	N	N	N
3. Multi-Family Dwelling (see Section 8)	SP	SP	SP	SP	SP	N	N
4. Motel (see Section 8)	SP	SP	SP	SP	SP	SP	N
5. Trailer or Mobile Home	N	N	N	N	N	N	N
6. Trailer Park or Mobile Home Park	N	N	N	N	N	N	N
7. Camp Ground (see Section 6-10)	SP	N	N	N	N	N	N
8. Conversion of an existing Single Family Dwelling to accommodate not more than two (2) families provided that each dwelling unit resulting from such conversion shall have not less than 500 sq. ft. of habitable space.	SP	SP	SP	SP	SP	SP	SP
9. Conversion of an existing building into a Multi-Family Dwelling (see Section 8)	SP	SP	SP	SP	SP	SP	SP
10. Lodging House	SP	SP	SP	SP	SP	SP	N
11. Dog Kennel	SP	N	N	N	N	N	N

	RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
	R-45	R-22.5	R-10	BC	BL	COM	IND
PRINCIPAL USES							
B. Institutional, Recreational and Educational Uses							
1. Religious Uses exempted by Chapter 40A, Section 3, M.G.L.	Y	Y	Y	Y	Y	Y	Y
2. Educational Uses exempted by Chapter 40A, Section 3, M.G.L.	Y	Y	Y	Y	Y	Y	Y
3. Cemetery	SP	SP	N	N	N	N	N
4. Public Utility	SP	SP	SP	SP	SP	SP	SP
5. Municipal Use	Y	Y	Y	Y	Y	Y	Y
6. Private Nonprofit Library or Museum	SP	SP	SP	SP	SP	N	N
* 7. Private nonprofit community center building, settlement house, adult education/adult day care center or other similar facility provided indoor or outdoor noisy activities shall be not less than one hundred (100) feet from any lot line and shall not be detrimental to the neighborhood.	SP	SP	SP	SP	SP	SP	N
8. Hospital, infirmary, nursing home, convalescent home	SP	SP	SP	SP	SP	N	N
8A. Emergency Medical Ambulance Service Added 5/10/2001 Art. 6	SP	SP	SP	Y	Y	Y	Y

* (Adult Education/Adult Day Care Center added 3/18/99 Art. 35)

	RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
	R-45	R-22.5	R-10	BC	BL	COM	IND
PRINCIPAL USES							
9. Day nursery, nursery school, kindergarten or other agency giving day care to children provided any outdoor play area is screened by a fence, wall or planting line from any neighboring residential structure and is not detrimental to the neighborhood.	SP	SP	SP	SP	SP	N	N
10. Overnight camp for children under 18 years of age (see Section 6.10)	SP	SP	N	N	N	N	N
11. Trade, professional or other school conducted as a private business for gain.	N	N	SP	SP	SP	SP	SP
12. Private, nonprofit membership club or lodge.	SP	SP	SP	SP	SP	N	N
13. Indoor swimming, tennis or other recreational facility.	SP	SP	SP	SP	SP	SP	N
14. Entertainment and recreational facility operated as a business for gain, including but not limited to bowling alley, theatre, or sports arena provided such use is housed indoors in sound-insulated structure protecting the neighborhood from inappropriate noise.	N	N	N	SP	SP	SP	N
15. Outdoor sports facility conducted for profit such as a golf course, country club, tennis club, marina, provided indoor or outdoor activities shall be not less than 100 feet from any property line and shall not be detrimental to the neighborhood.	SP	SP	SP	SP	SP	SP	N

	RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
	R-45	R-22.5	R-10	BC	BL	COM	IND
PRINCIPAL USES							
C. Agricultural Uses							
1. Farm-agricultural, orchard, horticultural, silvicultural, or aquacultural.	Y	Y	Y	Y	Y	Y	Y
2. Farm-livestock or poultry, but not swine, provided that any building housing livestock or poultry be not less than fifty (50) feet from the property boundary.	Y	Y	Y	Y	Y	Y	Y
3. Slaughterhouse, commercial raising of swine and raising of fur bearing animals.	N	N	N	N	N	N	N
D. Office and Laboratory							
1. Business, financial or professional offices but no retail business, no manufacturing and no processing.	SP	SP	SP	Y	Y	Y	N
2. Office or clinic for medical, psychiatric, or other health services for the examination or treatment of persons as outpatient, including only laboratories that are part of such office or clinic.	SP	SP	SP	Y	Y	Y	Y *
3. Laboratory or research facility.	SP	SP	SP	SP	SP	SP	SP
4. Radio or television studio	SP	SP	SP	Y	Y	Y	Y
5. Radio or television transmission facility	SP	N	N	N	N	N	N

* Amended 9/30/91 Art. 1

RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

PRINCIPAL USES

E. Retail Business and Consumer Service Establishment

1. Store serving local retail business needs of residents of vicinity including but not limited to bakery, grocery, meat market, fruit store, hardware or paint store, florist, news and/or tobacco store, drug store, provided the gross floor area of such establishment is under 4,000 sq. ft. and further provided all storage and sales of material are conducted within a building and provided there be no manufacturing or assembly on the premises.	N	N	N	Y	Y	Y	N
2. Store for retail sale of merchandise provided all storage and sale of materials are conducted within a building and provided there be no manufacturing or assembly on the premises.	N	N	N	Y	Y	Y	SP
3. Eating place serving food and beverages to be consumed within the building.	SP	SP	SP	Y	Y	Y	SP
4. Space for manufacture, assembly or packaging of consumer goods provided that at least 50% of such merchandise is sold at retail on the premises and that all display, sales and storage is conducted within a building; and further that not more than 5 persons are employed at any one time for the manufacturing, assembly or packaging of such goods.	N	N	N	SP	SP	SP	Y

RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

PRINCIPAL USES

PRINCIPAL USES							
5. Service business serving local needs, such as barber shops, beauty shops.	N	N	N	Y	Y	Y	N
6. Hand laundry, dry cleaning, shoe repair or tailoring, or other similar uses provided personnel is limited to not more than 5 persons at any time on the premises.	N	N	N	Y	Y	N	N
7. Mortuary, undertaking or funeral establishment.	SP	SP	SP	Y	Y	N	N
8. Veterinary establishment or similar establishment provided that animals are kept wholly indoors.	SP	SP	SP	SP	SP	N	N
9. Store for retail sale of merchandise such as but not limited to lumber yards and building supply yards wherein merchandise is stored in the open, provided that all merchandise so stored is screened from ground level view from any abutting street or abutting property where such materials are stored.	N	N	N	N	N	Y	Y
10. Flea market	SP	SP	SP	SP	SP	SP	N
11. Eating place serving food and beverages to be consumed within or outside the building.	N	N	N	Y	Y	Y	SP
* 12. Planned Shopping Center	N	N	N	N	N	Y	N

* Added January 30, 1989, Art. 4

RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

PRINCIPAL USES

PRINCIPAL USES	R-45	R-22.5	R-10	BC	BL	COM	IND
* 13. Offices and stores located in the same building serving local retail business needs of residents of the vicinity including but not limited to bakery, grocery, meat market, fruit store, hardware or paint store, florist, new and/or tobacco store, drug store, provided that said building shall not exceed 25,000 square feet of floor space per floor, two stories maximum, and further provided that all storage and sales of material are conducted within a building and further provided that there be no manufacturing or assembly on the premises, and further provided that any use permitted in the zone may occupy space. Maximum of one building per lot, minimum lot size – 4 acres, and all parking requirements must be met.	N	N	N	N	Y	Y	SP

*Added October 1, 1990 Art. 15

RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

PRINCIPAL USES

F. Automotive Service and Open Air
Drive-In Retail Service

1. Gasoline service station	N	N	N	Y	Y	Y	N
2. Sale or rental of automobiles, boats and other motor vehicles and accessory storage and repair conducted entirely within an enclosed sound-insulated structure to protect the neighborhood from inappropriate noise and other disturbing effects such as but not limited to flashing, fumes, gases, smoke and vapors.	N	N	N	N	Y	Y	N
3. Sale or rental of automobiles, boats and other motor vehicles and accessory storage and repair conducted partly or wholly on open lots.	N	N	N	* SP	SP	Y	N
4. Automobile repair shop provided all work is carried out within the building.	N	N	N	N	SP	Y	N
5. Car washing establishment	N	N	N	N	SP	SP	N
6. Sales place for flowers, garden supplies, agricultural produce partly or wholly outdoors, including commercial greenhouses.	SP	SP	N	SP	Y	Y	N

G. Industrial, Wholesale and
Transportation Uses

1. Laundry and dry cleaning plant	N	N	N	N	N	Y	Y
2. Printing, binding, publishing and related arts and trades	N	N	N	SP	SP	Y	Y

*Amended 2/8/88 Art. 18

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RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

PRINCIPAL USES							
3. Bottling of beverages	N	N	N	N	N	Y	Y
4. Small engine repair, plumbing, electrical or carpentry shop or other similar service or repair establishment.	N	N	N	SP	SP	Y	Y
5. Place for manufacturing, assembling or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor be effectively confined to the premises or be disposed of in a manner that does not create a nuisance or hazard to safety or health.	N	N	N	N	N	Y	Y
6. Wholesale business and storage in a roofed structure.	N	N	N	SP	SP	Y	Y
7. Trucking terminal.	N	N	N	N	N	N	Y
8. Freight terminal.	N	N	N	N	N	N	Y
* 9. Automotive processing facility, for the service to and repair of automobiles for automotive manufacturers.	N	N	N	N	N	N	SP
H. Other Principal Uses							
1. Any trade, industry, or other use that is noxious or hazardous by reasons of vibration or noise or the emission of odors, dust, gas, fumes, smoke, cinders, flashing or excessively bright lights, refuse matter of electromagnetic radiation.	N	N	N	N	N	N	N
2. Open lot storage or sale of junk or salvaged materials.	SP	N	N	N	N	SP	N

*Added 6/17/91 Art. 12

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RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

PRINCIPAL USES							
3. Any use hazardous to health because of danger of flooding, inadequacy of drainage or inaccessibility to fire fighting apparatus or other protective service.	N	N	N	N	N	N	N
4. The stripping of loam, peat, sand or gravel or other material except for reuse on the same property.	SP	SP	SP	SP	SP	SP	SP
5. Storage Warehouse Buildings (added 3/18/99 Art. 37)	N	N	N	Y	Y	Y	Y
I. Accessory Uses							
1. Private garage, greenhouse, tennis court, swimming pool or other similar building or structure for domestic use.	Y	Y	Y	Y	Y	Y	Y
2. The raising or keeping of livestock or poultry as pets or for use by residents of the premises provided that the raising or keeping of these animals is carried on at least 50 feet from all property lines where residences are directly adjacent and the raising or keeping of these animals is not for commercial purposes.	Y	Y	Y	Y	Y	Y	Y
3. Use of space in a dwelling for a customary home occupation. (see Section 8.3)	SP	SP	SP	SP	SP	SP	SP
4. Renting of rooms in a single-family dwelling to not more than five persons.	SP	SP	SP	SP	SP	SP	SP

RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

ACCESSORY USES

5. One roadside stand per farm for sale of agricultural products the major portion of which are grown or produced on the premises.	Y	Y	Y	Y	Y	Y	Y
6. Use of property in connection with his trade by a resident plumber, carpenter, electrician, contractor, painter, or other artisan provided that no manufacturing or assembly work requiring substantially continuous employment shall be carried on and provided that all storage of materials, supplies or equipment shall be carried on within the principal building or within suitable accessory buildings. One automobile and one truck not exceeding one ton in capacity may be parked outdoors in connection with such business.	Y	Y	Y	Y	Y	Y	Y
7. Accessory building or use defined in Section 2 when a business is the principal use.	Y	Y	Y	Y	Y	Y	Y

RURAL RES.	OPEN RES.	CENT RES.	CENT BUS.	LOCAL BUS.	COMM	INDUS
R-45	R-22.5	R-10	BC	BL	COM	IND

ACCESSORY USES

ACCESSORY USES							
8. The number of vehicles over one ton in capacity currently parked or garaged on private property as of the effective date of this amendment may continue to be parked or garaged on said property without the need of a Special Permit. Any vehicles over one ton in capacity which are not parked or garaged on the property in question as of the effective date of this amendment will be required to obtain a Special Permit in order to park or garage said vehicle on their property. In the event that there are complaints pending against a property owner with the Zoning Enforcement Officer as of the effective date of this amendment involving the vehicles over one ton in capacity which are parked or garaged on private property, said property owner shall be required to obtain a Special Permit in order to park or garage said vehicle on their property. (Added 6/27/88 Art. 20)	SP	SP	SP	SP	SP	Y	Y
9. Any increase in the number of vehicles over one ton in capacity currently parked or garaged on said property requires a Special Permit with the exception of the Commercial and Industrial Districts. (Added 6/27/88 Art. 20)	SP	SP	SP	SP	SP	Y	Y
10. Vehicles of one ton or less in capacity shall not be regulated by Special Permit. (Added 6/27/88 Art. 20)	Y	Y	Y	Y	Y	Y	Y

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RURAL RES. OPEN RES. CENT RES. CENT BUS. LOCAL BUS. COMM BUS. INDUS

R-45 R-22.5 R-10 BC BL COM IND

ACCESSORY USES

ACCESSORY USES	R-45	R-22.5	R-10	BC	BL	COM	IND
11. Operation of a vehicle over one ton in capacity is not permitted on residential zones between the hours of 11 PM and 6 AM, with the exception of through vehicles and emergencies. Exceptions may be addressed by way of Special Permit. (Added 6/27/88 Art. 20)	SP	SP	SP	Y	Y	Y	Y
12. A detached garage accessory to a dwelling located on an abutting lot or on a lot or parcel directly across the street from the dwelling, provided that garage complies with the yard setback requirements on a conforming lot for the district. Grandfathered lots to be considered same as a conforming lot and shall meet the required setbacks for the purposes of this section. (Added 5/20/99 Art. 42)	SP	SP	SP	NA	NA	NA	NA

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5.5 MORATORIUM ON CERTAIN RADIO OR TELEVISION TRANSMISSION FACILITIES (Added 5/4/00 Applicable for 6 Mos. Only)

5.5.1 Purpose and Intent

The increasing use of business and personal wireless service facilities, often referred to as wireless telecommunications facilities, has generated a significant number of applications for the placement, construction and modification of such facilities throughout the Commonwealth and the Worcester County region. The Town of Spencer currently relies upon accepting such applications as a form of "Radio and Transmission Facility" as its By-Law never anticipated the emerging and rapidly developing field of wireless communications. Given the rapidly evolving nature of the underlying technology, few communities in the County in general, and the Town of Spencer in particular, have had an opportunity to review and analyze the range of land use and regulatory issues raised by such facilities.

By enacting a temporary, six (6) month moratorium, the Town believes it will have sufficient time to develop reasonable regulations regarding the placement, construction and modification of such facilities and to accommodate new technologies. The Town does not intend the resulting amendments to prohibit or have the effect of prohibiting the provision of personal wireless services.

The Town fully recognizes its responsibilities under the Telecommunication Act of 1996. However, the Town believes that full and impartial compliance with the Act is best accomplished through thoughtful analysis and subsequent regulatory guidance. It is believed that this approach is in the best interest of the Town and its inhabitants as well as the Telecommunications Industry. Therefore, and in reliance on the Town's authority under M.G.L.c. 40A, and under the Massachusetts State Constitution and in keeping with its responsibilities to protect public health, public welfare and public safety, the Town hereby adopts this temporary partial moratorium.

5.5.2 Moratorium Provisions

For a period of six (6) months from the date of the adoption of this By-Law, no building or special permit shall be issued for the use, placement, construction or modification of any structure for the provision of radio or television facilities, personal wireless service facilities or such comparable structures.

SECTION 6. DENSITY REGULATIONS

6.1 APPLICABILITY

Except as may be specified elsewhere in this By-Law, no building shall be built nor shall any existing building be enlarged or altered except in conformance with the dimensional and density requirements of this By-Law as set forth in the accompanying Table of Dimensional and Density Regulation, Section 6.12.

6.2 LOTS PARTLY IN SPENCER

When a lot is situated in part of the Town of Spencer and in part in the adjacent municipality, the provisions of this By-Law shall be applied to the portion of such lot in the Town of Spencer in the same manner as if the entire lot were situated in Spencer.

6.3 LOTS TRANSECTED BY ZONING DISTRICT BOUNDARY

When a lot is transected by a zoning district boundary, the regulations of the By-Law applicable to the larger part of the area of such lot may also at the option of the owner be deemed to govern in the smallest part beyond such zoning district boundary but only to the extent not more than thirty (30) linear feet in depth beyond such zoning district boundary.

6.4 LOT AREA

Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purposes of meeting the area requirements of this By-Law even though the fee to such land may be in the owners of abutting land.

6.5 LOT SIZE REDUCTION

Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been taken or was taken by eminent domain, shall not be deemed to be transferred in violation of the land area, width and space provisions of this By-Law.

6.6 RESIDENTIAL LOT

No dwelling shall be erected except on a lot fronting on a street, and there shall be not more than one principal residential building on one lot.

6.7 RESIDENTIAL USE IN OTHER DISTRICTS

Whenever any residential dwelling is located in or constructed in an industrial or business zone, then the provisions and restrictions of the nearest residential zone shall apply to such residence.

6.8 AREA REQUIREMENTS FOR NEW BUILDINGS OR USES

The land and space required for any new building or use shall not include any land or area required by any other building or use to fulfill Spencer zoning requirements.

6.9 CAMP SITES

For the purposes of this By-Law, a camp is a recreational area of 40 acres or more, under single ownership for camping, tenting, cabins or trailer use, for seasonal or part time occupancy only. Such sites, facilities or buildings as are used or occupied for limited periods for recreational purposes shall not be subject to the lot and area requirements which pertain to Residential Districts. Except for supervisory or maintenance personnel, no recreational unit, building or site shall be occupied on a permanent basis. Any such recreational use of land or buildings shall be subject to the granting of an appropriate license by the Board of Health under the provisions of Chapter 140, Sections 32A through 32E, MGL. Before the issuance of a special permit by the Board of Appeals, a site plan must be submitted by the applicant showing all camping and tenting areas, trailer or building sites, water supply and sanitary facilities.

6.10 BUILDING HEIGHT EXEMPTION

Height limitations of the Table of Dimensional and Density Regulations shall not apply to chimneys, TV antennae, towers, ventilators, tanks, silos, or other parts of buildings or structures not intended for human occupancy. Any of the above shall be constructed so as in the event of collapse, the structure shall fall within the bounds of the lot on which it is constructed. A maximum height of 51 feet from ground level shall apply.

The Board of Appeals may authorize, by special permit, an increase in the maximum height restrictions for any of the above upon a finding that such an increase will not be detrimental to surrounding properties and will be in harmony with the general purpose and intent of this By-Law.

6.11 EXCEPTIONS FROM YARD REQUIREMENTS

Exceptions to the yard requirements, as specified in the Table of Dimensional and Density Regulations are as follows:

6.11.1 In all non-residential zoning districts, there shall be at least a 40-foot buffer zone adjacent to a residence district.

6.11.2 In residential zoning districts, detached accessory buildings and garages, when located in rear yards, may be placed up to 10 feet of the lot line except for corner lots as indicated in 6.11.3

6.11.3 For all corner lots, the front yard minimum shall apply to all buildings on each street.

6.11.4 A dwelling need not be set back more than the average of the set backs of dwellings on the lots adjacent to either side. If a vacant lot exists on the side, it shall be considered as a dwelling set back the depth of the required front yard.

6.12 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS

District	Use	Minimum Lot Area (Sq. Ft.)	Minimum Lot Frontage (Ft.)	Minimum Yards (Ft.)			Minimum Length of Rear Lot Line (Ft.)	Maximum Building Coverage (%)	Maximum Height (Ft.)	Maximum No. of Stories
				Front	Side	Rear				
R-45	Multiple Dwelling	45,000 plus 8,000 per unit in excess of two	200	35	25	35	100	15	35	2 1/2
	Conversion of existing Dwelling to Two Family	None	None	35	25	35	None	15	35	2 1/2
	Motel	45,000	200	50	50	50	100	20	35	2 1/2
	Any other permitted use	45,000	200	35	25	35	100	15	35	2 1/2
R-22.5	Multiple Dwelling	22,500 plus 3,500 per unit in excess of two	150	25	15	25	75	20	35	2 1/2
	Conversion of existing dwelling to Two Family	None	None	25	15	25	None	20	35	2 1/2
	Motel	45,000	200	50	50	50	100	20	35	2 1/2
	Any other permitted use	22,500	150	25	15	25	75	20	35	2 1/2
R-10	Multiple Dwelling	10,000 plus 2,500 per unit in excess of two	80	20	10	20	40	25	40	3
	Conversion of existing dwelling to Two Family	None	None	20	10	20	None	25	40	3

6.12 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS

District	Use	Minimum Lot Area (Sq. Ft.)	Minimum Lot Frontage (Ft.)	Minimum Yards (Ft.)			Minimum Length of Rear Lot Line (Ft.)	Maximum Building Coverage (%)	Maximum Height (Ft.)	Maximum No. of Stories
				Front	Side	Rear				
R-10 Cont'd	Motel	45,000	200	50	50	50	100	20	40	3
	Any other permitted Use	10,000	80	20	10	20	40	25	40	3
BC	Multiple Dwelling	10,000 plus 2,500 per unit in excess of two	80	20	10	20	40	25	40	3
	Conversion of existing dwelling to Two Family	None	None	20	10	20	None	25	40	3
	Motel	45,000	200	50	50	50	None	20	40	3
	Any other permitted Use	None	None	None	None	None	None	70	40	3
BL	Multiple Dwelling	20,000 plus 3,500 per unit in excess of two	100	30	20	30	None	35	35	3
	Conversion of existing dwelling to Two Family	None	None	30	20	30	None	35	35	3
	Motel	45,000	200	50	50	50	None	20	35	3
	Any other permitted use	20,000	100	30	20	30	None	35	35	3

6.12 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS

District	Use	Minimum Lot Area (Sq. Ft.)	Minimum Lot Frontage (Ft.)	Minimum Yards (Ft.)			Minimum Length of Rear Lot Line (Ft.)	Maximum Building Coverage (%)	Maximum Height (Ft.)	Maximum No. of Stories
				Front	Side	Rear				
COM	Conversion of existing building to multiple dwelling	20,000 plus 3,500 per unit in excess of two	100	30	20	30	None	35	35	3
	Conversion of existing dwelling to two family	None	None	30	20	30	None	35	35	3
	Motel	45,000	200	50	50	50	100	20	35	2 ½
	Any other permitted use	20,000	100	30	20	30	None	35	35	3
IND	Conversion of existing building to multiple dwelling	40,000 plus 3,500 per unit in excess of two	150	30	20	30	None	33 1/3	50	3
	Conversion of existing dwelling to two family	None	None	30	20	30	None	33 1/3	50	3
	Any other permitted use	40,000	150	30	20	30	None	33 1/3	50	3

SECTION 7. SIGNS

No signs or advertising devices of any kind or nature shall be erected on any premises or affixed to the outside of any structure or be visible from the outside of any structure in Spencer except as specifically permitted in this section.

7.1 RESIDENCE DISTRICTS

Signs or advertising devices are permitted only as follows:

One sign displaying the street number or name of the occupant of premises, or both, not exceeding three (3) square feet in area. Such sign may be attached to a building or may be on a rod or post not more than six (6) feet height and not less than three (3) feet from the street line. Such sign may include identification of an accessory studio or professional office in the dwelling or on the premises, or may identify other permitted accessory uses, including customary home occupations.

One bulletin or announcement board or identification sign for a permitted non-residential building or use, not more than six (6) square feet signboard area. For churches and institutions, two bulletin or announcement boards or identifications signs are permitted on each building. Each such church or institution sign shall be not more than ten (10) feet signboard area. No such sign shall be located nearer a street than one-half the required front yard depth.

On premises with a lawfully non-conforming use, one sign not more than six (6) square feet signboard area.

In Residence Districts all signs or advertising devices shall be stationary and shall not contain any visible moving or moveable parts. No sign or advertising device in such Districts shall be of neon or illuminated tube type. Lighting of any sign or advertising device shall be continuous (not intermittent nor flashing nor changing) and shall be so placed or hooded as to prevent direct light from shining onto any street or adjacent property.

7.2 BUSINESS DISTRICTS AND INDUSTRIAL DISTRICTS

Signs shall relate to the premises on which they are located and shall not identify the occupant of such premises or advertise the articles or services available within said premises.

Signs permitted in Business Districts and in Industrial Districts shall not be more than one hundred (100) square feet signboard area per sign.

In Business and Industrial Districts where buildings are set back forty (40) feet or more, one free standing sign per lot is permitted. The top edge of any such free standing sign shall not be higher than twenty-five (25) vertical measure above the average level of the ground between the supports of each sign. For traffic safety, the whole of the signboard or display elements of any free standing sign shall be either below three (3) feet high or above thirteen feet height above average ground level. Any such free-standing sign may be located within the front yard space, if any on such lot, but not nearer than twelve (12) feet to any lot line.

No free-standing sign shall have signboard area (or display area, if no signboard) exceeding one hundred (100) square feet gross area, measured from the tops of the topmost display elements to the bottom of the lowest display elements, and from exterior side to exterior side of display elements, and including in such measurements any blank space between display elements. No display or signboard dimension shall exceed sixteen (16) feet for a free-standing sign.

Illuminated signs are permitted, subject to the following conditions:

No sign shall be intermittently illuminated, nor of a traveling light, animated or flashing light type.

Each steadily illuminated sign shall not exceed one hundred (100) square feet gross display area as measured in paragraph above.

7.3 ALL DISTRICTS

No temporary or permanent political, special promotion signs, banners, streamers, or placards shall be erected, suspended, posted or affixed in any manner outdoors or on the exterior of any building for a period of more than thirty (30) days before the promoted event or election. The above shall be removed not later than 48 hours from the conclusion of the election or promoted event.

In all zoning districts, for safety reasons, any private outdoor lighting fixture, whether temporary or permanent, other than gaseous tube letters in signs, shall be so placed or hooded that the light source itself shall not be directly visible or any point beyond the lot lines of the premises illuminated.

Lighting of any sign or advertising device shall be continuous (not intermittent nor flashing nor changing) and shall be so placed or hooded as to prevent direct light from shining onto any street or adjacent property.

In any district, the Board of Appeals may allow by special permit off-premises sign(s) for a business provided that the sign(s) complies with the following conditions:

1. It is free-standing and not attached to a building or other structure.
2. It indicates the direction of a business not located on the lot on which the sign is located.
3. It does not exceed 8 square feet in area, nor does it extend more than 15 feet above ground.
4. It is not self-illuminated.

5. The craftsmanship of the sign has been clearly executed with care.
6. The owner of the lot on which the sign is to be located has signed a notarized statement allowing the sign's placement on the lot.

For interpretation of this By-Law, the following definitions shall apply:

BUSINESS – Activity of some continuity, regularity and permanency, means of material being and livelihood.

SIGN - Any privately owned permanent or temporary structure, device, billboard, letter, word, banner, pennant, insignia or representation which is used as, or which is in the nature of, an advertisement, announcement or direction, and which is within the public view.
The following shall not be considered signs:
a. Flags and insignias of any government;
b. Legal notices, identification, informational or directional signs erected or required by governmental bodies.

PRE-EXISTING, NON-CONFORMING SIGNS

A pre-existing, non-conforming sign may continue to be maintained provided, however, that no such sign shall be permitted, if after the effective date of this By-Law, it is enlarged, relocated, redesigned, or altered in any way, which included repainting in a different color or relettering (except to conform to this By-Law). Any sign which has deteriorated to such an extent that the cost of restoration would exceed 35 percent of the replacement cost of the sign at the time of restoration shall not be repaired except to conform to the requirements of this By-Law.

Whosoever violated the provisions of this By-Law shall be punished by a fine of \$5.00 for each day of said violation, not to exceed \$200.00 in total fines.

SECTION 8. SPECIAL REGULATIONS

8.1 MULTIPLE FAMILY DWELLINGS

Conversion of a building, existing at the time of the adoption of this By-Law into a multiple family dwelling; and the construction of a multiple family dwelling containing not more than 12 dwelling units are authorized under the following conditions:

8.1.1 A space of not less than twenty (20) feet shall be maintained open with grass, bushes, flowers or trees all along each side and rear lot line with 45 feet along the front lot line except for entrance and exit driveways and such open space shall not be built on, paved, or used for parking.

8.1.2 The manner of sewage disposal shall be approved in writing by the Board of Health.

8.1.3 All off-street parking shall be provided preferably at the rear or side of the building for which it is intended to be used.

8.1.4 A condition for Board of Appeals approval of a special permit authorizing the construction of a multiple dwelling shall be that the multiple dwelling be constructed in accordance with an approved site plan prepared by a professional architect or engineer. Said site plan shall show the exact location of the multiple dwelling on the lot with front, side and rear yard and lot line dimensions, location of off-street parking, location and nature of open space with specific notations as to grass, trees, bushes, shrubs and flowers and any other information deemed necessary by the Board of Appeals.

8.2 MOTELS

The construction of a motel is authorized under the following conditions:

8.2.1 A space of not less than twenty (20) feet shall be maintained open with grass, bushes, flowers or trees all along each side, rear and front lot line except for entrance and exit driveways and such open space shall not be built on, paved or used for parking.

8.2.2 Each rental unit shall contain not less than two hundred (200) square feet habitable floor area.

8.2.3 Each motel site shall be provided with not more than two (2) motor vehicle driveways for each abutting street which shall intersect the abutting street or streets at ninety (90) degrees.

8.2.4 A condition for Board of Appeals approval of a special permit authorizing the construction of a motel shall be that the motel be constructed in accordance with an approved site plan prepared by a professional architect or engineer. Said site plan shall show the exact location of the motel on the lot with front, side and rear yard and lot line dimensions, location of off-street parking, location and nature of open space with specific notations as to grass, trees, bushes, shrubs and flowers and any other information deemed necessary by the Board of Appeals.

8.3 HOME OCCUPATION

A home occupation is authorized under the following conditions:

8.3.1 The occupation or profession shall be carried on wholly within the principal building or accessory structure thereto provided that the home occupation does not occupy more than 300 square feet.

8.3.2 Not more than one person outside the family shall be employed on the premises.

8.3.3 There shall be no exterior display, no exterior sign except as permitted in Section 7 of this By-Law, no exterior storage of materials and no other variation from the residential character of the principle building or accessory structure.

8.3.4 No traffic shall be generated by a home occupation in greater volumes than would normally be expected in a residential neighborhood and any need for parking shall be off-street and located other than in the required front yard.

8.3.5 No offensive noise, vibration, smoke, dust, odors, heat, glare, or electrical interference shall be produced which would disrupt the neighborhood's residential integrity.

8.3.6 A home occupation includes but is not limited to, the following:

Art studio, Commercial artist, Photography
Musician
Hairdresser, Barbershop
Real Estate Offices, Broker, Insurance
Dressmaker, Millinery, Handicraft, Baking, Cooking
Professional office of a physician, surgeon, optometrist, upholsterer, veterinary,
accountant, dentist, lawyer, engineer, architect, or landscape architect
Repair shop (see definition)

8.3.7 A home occupation shall not be interpreted to include the following:

Clothing Rental
Restaurants
Dancing Instruction
Convalescent Homes
Tourist Home
Commercial Stables and Kennels
Mortuary Establishments
Store, Trades or Business not herein excepted

8.3.8 One home occupation is allowed.

SECTION 9. OFF-STREET PARKING AND LOADING REQUIREMENTS

(Amended 11/8/2001 Art. 2)

- 9.1 No land shall be used and no building or structure shall be erected, enlarged or used unless the off-street parking and loading space requirements are provided as specified in this section. For the purpose of this section an enlargement of any building shall require the provision of off-street parking for the existing building as if it were newly constructed.
- 9.2 Where the computation of required parking space or loading bay results in a fractional number, only the fraction of one-half ($1/2$) or more shall be counted as one (1).
- 9.3 Required off-street parking facilities shall provide a minimum of 50% of the required parking on the same lot as the principal use they are designed to serve. Additional required parking will be allowed to be on a lot owned or controlled by the same owner and must be located within a 400-foot radius of the property/use served.
- 9.4 Each required car space shall be not less than nine (9) feet in width and eighteen (18) feet in length exclusive of drives and maneuvering space and the total area of any parking facility for more than five (5) cars shall average at least three hundred (300) square feet per car inclusive of driveways.
- 9.5 Each loading bay shall be not less than ten (10) feet in width and thirty-five (35) feet in length exclusive of drives and maneuvering space, and all required bays, drives and maneuvering space shall be located entirely on the lot with direct access to the building intended to be served.
- 9.6 Where one building is used for more than one use parking requirement shall be computed for each use (motel with a restaurant would be required to provide parking for both rental units and for seating capacity of the restaurant – a professional office in a residence must provide the space for both office use in addition to the residential requirement.)

9.7 TABLE OF MINIMUM REQUIRED PARKING SPACES

PRINCIPAL USES	NUMBER OF SPACES	
	Zoning District: R-45, R-22.5, R-10 BL, COM, IND	CB
RESIDENTIAL USES		
Single Family Dwelling	2	1
Two Family Dwelling, per dwelling unit	2	1
Multi-Family Dwelling, per dwelling unit up to 4 units	2	1
Per Additional unit up to 8 units	2 ½	1
Per Additional unit over 8 units	3	1
Renting of rooms in a single-family dwelling		
Per room rented	1	1
Motel/Lodging House	2	1
Add per rental unit	1	1
Add per 20 sq. ft. of function area	1	1
BUSINESS/COMMERCIAL		
Business, financial or professional offices		
Per 300 sq. ft. of gross leaseable floor area	1	0
Laboratory or Research Facility		
Per 500 sq. ft. of gross leaseable floor area	1	½
Radio or Television Studio		
Per 300 sq. ft. of net floor area used for other than equipment	1	0
RETAIL SALE/TRADE SERVICES		
Store for Retail Sale of Merchandise		
Per 200 sq. ft. of gross leaseable floor area up to 2000 sq. ft.	1	0
Per additional 200 sq. ft. over 2000 sq. ft.	1	1
Dry Cleaners		
Per 200 sq. ft. of gross leaseable floor up to 2000 sq. ft.	1	0
Per additional 200 sq. ft. over 2000 sq. ft.	1	1
Dry Cleaners – Large Scale (Uniform Service, No customer service)		
Per employee	1 ½	N/A
Per commercial vehicle (See Note 1)	1	N/A
Laundromats – Self Service		
Per employee	1	0
Per three machines	1	½ after first
Planned Shopping Center – See Section 2	See Section 2	See Section 2

9.7 TABLE OF MINIMUM REQUIRED PARKING SPACES (Continued)

PRINCIPAL USES	NUMBER OF SPACES		
	Zoning District:	R-45, R-22.5, R-10 BL, COM, IND	CB
SCHOOLS			
Elementary / Middle School Per six (6) students	1	1	
Senior High School Per four (4) students	1	1	
College/University Per 2.5 students	1	1	
RESTAURANTS			
Quality Restaurant			
First 1,000 sq. ft. of gross leasable floor area	18	0	
Additional 1,000 sq. ft. of gross leasable floor area (pro rated)	18	9	
Family Restaurant (i.e. Big Boys, Friendly’s Pizza Hut)			
First 1,000 sq. ft. of gross leasable floor area	11	0	
Additional 1,000 sq. ft. of gross leasable floor area (pro rated)	11	6	
Fast Food With Drive-Thru (i.e. McDonald’s, Burger King, Starbucks, Dunkin’ Donuts)			
First 1,000 sq. ft. of gross leasable floor area	16	0	
Additional 1,000 sq. ft. of gross leasable floor area (pro rated)	16	8	
Fast Food Without Drive-Thru (i.e. McDonald’s, Burger King, Star Bucks, Dunkin’ Donuts)			
First 1,000 sq. ft. of gross leasable floor area	17	0	
Additional 1,000 sq. ft. of gross leasable floor area (pro rated)	17	9	
INDUSTRIAL/MANUFACTURING			
Industrial/Manufacturing			
Light Industrial/Industrial Park			
Per 1,000 sq. ft. of gross leasable floor area	1 ¾	1 ¾	
Wholesale/Warehousing			
Per 1,000 sq ft. of gross leasable floor area	¾	¾	

9.7 TABLE OF MINIMUM REQUIRED PARKING SPACES (Continued)

PRINCIPAL USES	NUMBER OF SPACES		
	Zoning District:	R-45, R-22.5, R-10 BL, COM, IND	CB
AUTOMOTIVE SERVICES			
Sale/Rental of Motor and/or Recreational Vehicles			
Per employee	1	1	
Per 10 units for sale or rent	1	1	
Repair Garage/Services/Gas Station			
Per employee	1	1	
Per repair bay/stall	3	3	
Per fuel pump	1	1	
Convenience Store with Fueling			
Per employee	1	0	
Per 200 sq. ft. of gross leasable floor area up to 2,000 sq ft	1	0	
Per additional 200 sq. ft. over 2,000 sq. ft.	1	1	
Per fuel pump	1	1	
Car Wash			
Per employee	1	N/A	
Per service bay/area	1 ½	N/A	
TRANSPORTATION FACILITIES			
Livery			
Per employee	1	1	
Per commercial vehicle (See Note 1)	1	1	
Bus Station			
Per employee	1	N/A	
Per attendee	½	N/A	
Bus/Truck/Equipment Parking Facility			
Per employee	1 ½	N/A	
Per commercial vehicle (See Note 1)	1	N/A	
Trucking Freight Terminal			
Per employee	1 ½	N/A	
Per commercial vehicle (See Note 1)	1	N/A	

9.7 TABLE OF MINIMUM REQUIRED PARKING SPACES (Continued)

PRINCIPAL USES	NUMBER OF SPACES	
	Zoning District:	R-45, R-22.5, R-10 BL, COM, IND CB
OUTDOOR SPORT FACILITIES		
Golf Course, per hold	3	3
Club, Tennis, etc.		
Per employee	1	1
Per court	3	3
Marina		
Per employee	1	N/A
Per mooring	1	N/A
(Building requirements to be added)		
MISCELLANEOUS		
Nursing, Convalescent Home		
Per bed	2	1/3
Hospital, Infirmary		
Per bed	2	2
Preschool/Daycare, Adult or Child		
Per enrollment	1	1
Places of Assembly		
Fixed seating, per seat	1/2	1/4
Without fixed seating, per attendee	1/2	1/4

Note (1) Spaces to be sized appropriate for vehicles parked.

9.8 In addition to the parking requirements, any establishment installing a drive-up window must provide for the safe stacking of vehicles and an escape lane from the drive-up window. Said regulation shall apply to all Zoning Districts.

9.8.1 An escape lane is defined as a lane adjacent to a stacking lane which would allow a patron to exit from a stacking lane prior to reaching service window/machine. Multiple service windows/machines shall be allowed to use common escape lanes.

9.8.2 Stacking and escape lanes shall be a minimum of ten (10) feet in width each except when they consist of curved sections where there shall be an increase to a minimum of 12 feet.

9.8.3 All drive-up and escape lanes must be laid out in a way so as not to block or interfere with parking lot internal traffic circulation and parking spaces.

9.9 TABLE OF STACKING AND ESCAPE LANE REQUIREMENTS

PRINCIPAL USE	NUMBER OF SPACES
COFFEE SHOP/FAST FOOD	
Stacking per window	15
Escape lane per window	1
BANK AUTOMATED/FULL SERVICE	
Stacking per window/machine	10
Escape lane per window/machine	1
PHARMACY/DRY CLEANER/INSURANCE/OTHER	
Stacking per window	5
Escape lane per window	1
FUELING FACILITY	
Stacking per service land (See Note 1)	3
Escape lane per two service lanes	1

NOTE (1) Stacking requirements start at end of service isle and do not include space directly in front of pumps.

9.10 TABLE OF OFF-STREET LOADING SPACE REQUIREMENTS

Number of Loading Bays Required for New
Structures by Gross Floor Area of Structure
(In Thousands of Square Feet)

CATEGORY OF USES	UNDER 4	4 – 15	15 – 50	51 – 100	100 – 150	OVER 150 FOR EACH ADDITIONAL 150 OR FRACTION THEREOF
Retail Trade Wholesale Storage Transportation Terminal Manufacturing Consumer Services Office Buildings	0	1	2	3	4	1
Residential Uses Recreation Research Laboratories	0	1	1	2	3	1

9.11 The Zoning Board of Appeals may reduce by Special Permit the requirements of Section 9 provided that the Board determines that compliance with the requirements is not necessary, is inappropriate and such reduction is in the best interest of the municipality.

9.12 The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.

SECTION 10. BOARD OF APPEALS

10.1 ESTABLISHMENT

There shall be a Board of Appeals of three (3) members appointed by the Selectmen. The Selectmen shall also appoint two (2) associate members of the Board of Appeals. The appointment, service and removal or replacement of members and associate members and other actions of the Board of Appeals shall be as provided in Chapter 40A of the General Laws.

10.2 POWERS

The Board of Appeals shall have the following powers:

- 10.2.1 Appeals – to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A of the General Laws, by the regional planning agency or by any person including an officer or board of the Town of Spencer, or of any abutting city or town aggrieved by an order or decision of the Inspector of Buildings, or other administrative official in violation of the General Laws, or of this By-Law.
- 10.2.2 Special Permits – To hear and decide applications for special permits as provided in this By-Law, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board of Appeals.
- 10.2.3 Variances – To authorize upon appeal, or upon petition with respect to a particular parcel of land thereon a variance from the terms of this By-Law, where, owing to conditions especially affecting such parcel but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law, but not otherwise.

Variances shall be given for land and shall not include use variances.

SECTION 11. SPECIAL PERMITS

11.1 FINDINGS

The Board of Appeals may grant special permits for certain uses or structures as specified in the Table of Use Regulations and elsewhere in this By-Law. Before granting an application for a special permit, the Board of Appeals with due regard to the nature and condition of all adjacent structures and uses shall find all of the following conditions to be fulfilled:

11.1.1 The use is in harmony with the general purpose and intent of this By-Law.

11.1.2 The proposed use will not create undue traffic congestion or unduly impair pedestrian safety.

11.1.3 The proposed use will not impair the integrity or character of the district or adjoining zones and not be detrimental to the health, safety or welfare.

11.2 CONDITIONS

The Board of Appeals may impose in addition to any other condition specified in this By-Law such additional conditions as it finds reasonably appropriate to safeguard the neighborhood, or otherwise serve the purposes of this By-Law including but not limited to the following:

11.2.1 Front, side or rear yards greater than the minimum required by this By-Law.

11.2.2 Screening buffers or planting strips, fences or walls as specified by the Board of Appeals.

11.2.3 Modification of the exterior appearance of the structure.

11.2.4 Limitation upon the number of occupants, method and time of operation or time duration of permit.

11.2.5 Regulation of the number and location of driveways or other traffic features and off-street parking or loading or other special features beyond the minimum required by this By-Law.

11.3 SITE PLAN

At the time of filing for the special permit, the applicant shall also submit a site plan, in duplicate, to the Board of Appeals. Said site plan shall show, when applicable, all existing and proposed buildings, parking spaces, driveway openings, driveways, service areas, and other open uses, all facilities for sewage, refuse and other waste disposal, and for surface water drainage, and all landscape features such as fences, walls, planting areas and walks. The provisions of this paragraph shall not apply to any principal residential dwelling or accessory use thereto requiring a special permit as specified in the Table of Use Regulations.

11.4 PUBLIC HEARING

A special permit shall only be issued following a public hearing held within sixty-five days after the filing date of the special permit application.

11.5 TWO YEAR LAPSE PROVISIONS

A special permit shall lapse two years from the granting thereof or such shorter time as specified in said permit if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause, but such period shall be extended by the time required to pursue or await determination of an appeal.

SECTION 12. ENFORCEMENT AND VIOLATIONS

12.1 ENFORCEMENT OFFICER

The Spencer Zoning By-Law shall be enforced by the Building Inspector. No building shall be erected, altered or moved in Spencer without a permit being issued by the Building Inspector. Such permit shall be applied for in writing to the Building Inspector. The Building Inspector shall not issue any permit unless the plans for the building and the intended use thereof in all respects fulfill the provisions of the Spencer Zoning By-Law, except as may have been specifically permitted otherwise by action of the Spencer Board of Appeals, provided a written copy of the terms governing any such permission be attached to the application and to the resulting building permit issued. One copy of each such permit as issued, including any conditions or exceptions attached thereto, shall be kept on file in the office of the Building Inspector.

12.2 CONFORMING TO SUBSEQUENT AMENDMENTS

A building permit or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued to completion as continuously and expeditiously as is reasonable.

12.3 VIOLATION PROCEDURE

The Building Inspector, upon being informed in writing of a possible violation of this By-Law or on his own initiative, shall make or cause to be made an investigation of facts and an inspection of the premises where the violation may exist. The Building Inspector, on evidence of any violation, after investigation and inspection shall give written notice of such violation to the owner and to the occupant of such premises. The Building Inspector shall demand in such notice that such violation be abated within a reasonable time, designated therein by the Building Inspector. Such notice and demand may be given by mail addressed to the owner of the address appearing for him on the most recent real estate tax records of the Town of Spencer and to the occupant at the address of the premises of such violation. If, after such notice and demand, such violation has not been abated within the time specified, the Building Inspector shall institute appropriate action or proceedings in the name of the Town of Spencer to prevent, correct, restrain or abate any violation.

12.4 REQUEST TO ENFORCE

If the Building Inspector is requested in writing to enforce this By-Law against any person allegedly in violation of the same, he shall notify in writing the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request.

12.5 PENALTY

Whoever violates any provision of this By-Law shall be punished by a fine not exceeding one hundred dollars (\$100.00) for each offense. Every day a violation continues after its abatement has been ordered by the Town shall constitute a separate offense.

SECTION 13. AQUIFER PROTECTION OVERLAY DISTRICT

(Added 5/9/91 Art. 10)

13.1 PURPOSE

The purpose of this Zoning By-Law is to protect existing and potential public and private water supplies for present and future use from contamination due to adverse development of land use practices.

13.2 DEFINITIONS

AQUIFER – A geological formation composed of rock, sand, and gravel that is capable of transmitting significant amounts of water.

DISCHARGE – The accidental or intentional spilling, leaking, pumping, emitting, emptying or dumping of toxic or hazardous materials upon or into any land or waters within the Town of Spencer.

DISPOSAL – The deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that hazardous material or any constituent thereof may enter the environment or be emitted into the air resulting in discharge to any waters including ground water.

EARTH EXCAVATION – The removal of earth including soil, loam, sand, gravel, clay, stone, quarried rock or other subsurface products except water.

GROUND WATER – All the water beneath the surface of the ground.

HAZARDOUS MATERIAL – Any substance or mixture of such physical, chemical or infectious characteristics, in sufficient quantity as to pose a significant actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged on land or waters in the Town. The term shall also include those substances which are included under 42 USC, Sec. 9601 (14) but is not limited to those substances and as defined in M.G.L. Ch.21E. Also any substance listed as the 129 priority pollutants by the Environmental Protection Agency and deemed a “hazardous waste” in M.G.L. Ch. 21C shall be deemed a hazardous material for the purpose of this By-Law.

HAZARDOUS WASTE – As defined in M.G.L. Ch. 21C means a waste, or combination of wastes, which because of its quantity, concentration, physical, chemical or infectious characteristics may cause, or pose a substantial present or potential hazard to human health, safety, or welfare of the environment. However, not to include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act of 1967 as amended and Massachusetts Surface Water Quality Standards (310 CMR 4.00).

IMPERVIOUS SURFACE – Material above or on the surface of, or occurring within twelve (12) inches of the surface of the ground that does not allow water to penetrate into the soil below.

RECHARGE AREAS – Areas composed of permeable porous material that allows significant infiltration and collection of precipitation of surface water to be transmitted to aquifers.

SANITARY SEWAGE – Wastewaters arising from ordinary domestic use, as from water closets, sinks, bathing facilities, laundry tubs, washing machines, dishwashers, or any source containing concentrations and types of pollutants as to be considered normal.

SOLID WASTE – Any discarded material with insufficient liquid content to be free flowing. This includes but not limited to biodegradable or non-biodegradable material, consisting of rubbish, garbage, scrap materials, junk, refuse, inert fill and landscape refuse.

13.3 DELINEATION OF AQUIFER PROTECTION DISTRICT

13.3.1: For the purpose of this By-Law, there is hereby established within the Town of Spencer an overlay district consisting of aquifer protection areas including zones of contribution and secondary recharge areas which are delineated on maps based on Department of Environmental Protection guidelines for determining zones of influence of ground water supplies. Zone II and Zone III Delineation Maps by Anderson-Nichols Company, Inc. dated March 1989 for Meadow Road Site and Cooney Road Site and Maps dated June 1990 for Cranberry Brook Well are to be used to define the boundaries of the aquifer overlay districts and shall be superimposed over existing districts as established by the Zoning By-Laws of the Town of Spencer. These maps are on file with the Town Clerk.

13.3.2: The Aquifer Protection Overlay District is defined as the zone of contribution and secondary recharge areas associated with the Cranberry Brook Well, Meadow Road Well, and Cooney Road Well.

13.3.2.1: The zone of contribution or Z-2 area is defined as that portion of the aquifer which contributes water to a well under the most severe recharge and pumping conditions that can realistically be anticipated.

- A. One Hundred and eighty (180) days of continuous pumping at the safe yield during drought conditions. This area includes the “cone of depression” limits (where draw down does not exceed 0.1 ft) and all the upgradient aquifer areas extended to the glacial till. This also incorporates the area known as Zone I, defined as the area contained in a four hundred (400) foot radius around each well.

13.3.2.2: The secondary recharge area or Z-3 is defined as the land area beyond the area of Zone II from which water and groundwater drain into Zone II. The surface drainage area, as determined by topography, is commonly coincident with the aquifer drainage area.

13.3.3: For parcels located partially in the Aquifer Protection Overlay District or split between both zones, the provisions of Section 4 apply to the individual portions of the affected

13.4: USE REGULATIONS

13.4.1: Within the Aquifer Protection Overlay District, the underlying district continue to apply, except that certain uses are prohibited where indicated by no (N) and require a special permit where indicated by (SP) in table 13.4.3. Where there is no entry or a yes (Y) in table 13.4.3 the underlying district requirements control.

13.4.2: Aquifer Protection Overlay District Summary of Use Regulations refer to table 13.4.3.

TABLE 13.4.3
Aquifer Protection Overlay District Use Regulations

Regulated Uses	Zones	
	Z-2	Z-3
1. Disposal of hazardous material.	N	N
2. Manufacture, generation or storage of hazardous materials in a larger quantity than 10 gallons indoors, or outdoors, except for the storage of liquid petroleum products for heating or power generation purposes within the same building.	N	SP
3. In-ground storage of hazardous materials.	N	SP
4. Sanitary landfill, junkyard, salvage yard or other solid waste disposal.	N	N
5. Industrial uses which discharge processed wastewater on-site, any commercial or service use discharging on-site wastewater containing contaminants other than sanitary sewage.	N	SP
6. Application of pesticides or herbicides for non-residential uses.	SP	Y
7. Open storage of ice control chemicals in quantities greater than one (1) ton.	N	SP
8. Disposal of snow containing de-icing chemicals.	N	SP
9. Commercial or agricultural earth excavation.	SP	SP
10. Rendering impervious more than 20% of lot area.	SP	SP
11. Public garage or commercial garage, cash washes, automotive paint shops, and automotive shops.	N	SP
12. Motor freight terminal.	N	SP
13. Commercial boat service repair and storage facilities.	N	SP

- | | | |
|--|----|---|
| 14. Multi-family residential development such that on-site domestic sewage disposal exceeds 110 gallons per day, per 15,000 square feet. | N | Y |
| 15. One and two family residential development such that on-site domestic sewage disposal exceeds 110 gallons per day, per 15,000 square feet. | SP | Y |

13.5: PRE-EXISTING NONCONFORMING USES

Nonconforming uses which are lawfully existing, begun or in receipt of a special permit or building permit prior to the effective date of this By-Law may be continued. These nonconforming uses may be extended or altered by special permit of the Zoning Board of Appeals provided that the criteria set forth in Section 6 is met and the danger of groundwater pollution from such use is not increased.

13.6: SPECIAL PERMITS

A special permit shall be granted by the Zoning Board of Appeals only if it determines that there is adequate assurance that there will be no violation of the Massachusetts Drinking Water Standards (310 CMR 22) and that the intent of this By-Law and certain criteria set forth in this section is met.

13.6.1: APPLICATION

Each application for a special permit in the Aquifer Protection Overlay District shall be filed with the Zoning Board of Appeals and be accompanied by six (6) copies of the application. In addition, the applicant shall distribute copies of the application to the Board of Health, Water Department, Fire Chief, Conservation Commission, Hazardous Waste Coordinator, and the Zoning Enforcement Officer. The applicant shall file with the application to the ZBA a signed affidavit under the pains and penalties of perjury indicating the dates and departments to which the application was delivered.

13.6.1.1 – The application shall include the following unless, prior to formal application, the ZBA determines that certain items are not pertinent:

1. A complete list of all chemicals, pesticides, fuels or other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of proposed measures to protect from vandalism, corrosion, leakage, and to provide for control of spills.
2. A description of potentially hazardous or toxic wastes to be generated, including storage and disposal methods.
3. For the disposal of on-site domestic wastewater and industrial waste with an estimated sewage flow of 15,000 gallons per day or greater, evidence of qualified professional design and installation, and impact assessment of nitrate, phosphate and coliform bacteria on the ground water quality.

4. A description of potentially hazardous wastes to be generated, including storage and disposal methods.

5. Evidence of approval and recommendations from the Chief of the Spencer Fire Department for the above-ground or underground storage of any flammable, hazardous or toxic materials.

13.6.1.2 – A site plan at a scale within the range of one (1) inch equals twenty (20) feet to one (1) inch equals one hundred (100) feet. The plan or plans shall be prepared by a Registered Professional Engineer or Professional Land Surveyor and shall include but not limited to the following:

1. Existing property boundaries
2. Existing and proposed topography at two (2) foot intervals.
3. All facilities for surface drainage and erosion control.
4. Existing and proposed structures and buildings.
5. All impervious areas and those left in natural state.
6. Maximum seasonal ground water elevation.
7. The type of all potential fill to be used on site.

13.6.1.3 – There shall be an analysis of the site conditions and the project's potential impact to the Zone of Contribution (Z-2) and/or Recharge Area (Z-3) by a qualified engineer or hydrogeologist.

13.6.2 APPLICATION

All departments listed in Section 13.6.1 shall review either separately or jointly the application and submit its recommendations in writing to the ZBA within 35 days of receipt of the application or the ZBA will assume that the department approves the application. If the ZBA determines the services of a qualified professional is necessary to reach a decision on an application, the owner or applicant shall bear the cost of these services.

13.6.3 APPROVAL CRITERIA

After notice and public hearing, and after due consideration of the reports and recommendations of the departments listed in Section 13.6.1, the ZBA may grant a special permit provided that it finds the proposed use:

1. Will not degrade the groundwater of the area below existing levels.
2. The project is in harmony with the purpose and intent of the Aquifer Protection Overlay District.
3. Will not during construction or thereafter have an adverse environmental impact on the zone of contribution or secondary recharge area.

4. Will not adversely affect an existing or identified public water supply within the Aquifer Protection Overlay District.

5. Will meet the following standards when locating in the Aquifer Protection Overlay District:

a. Any earth removal or land disturbing activity within the zone of contribution or secondary recharge area be no closer than six (6) feet above maximum seasonal groundwater elevation and appropriate measures to control erosion and siltation.

b. All fill material must be clean and free from hazardous materials, construction debris and any leachable material which is a potential hazard to the ground or surface waters.

c. Hazardous materials stored above ground must be in a containment area that would prevent it from reaching ground or surface waters in the event of a leak or spill with the containment designed to hold one hundred and ten (110) percent of the tank's contents.

d. Appropriate measures must be taken to ensure that any increase in stormwater runoff is artificially recharged into the aquifer by means of dry wells, infiltration trenches, retention basins and others.

e. All stormwater management facilities shall be designed for the twenty-five (25) year storm and insure that the rate of runoff will not exceed the rate prior to the development state. These facilities collecting runoff from paved areas shall include structures for trapping oil, gas, and other contaminants before being recharged into the aquifer and the owner is responsible for a minimum of yearly maintenance.

13.7 ENFORCEMENT

Evidence of non-compliance shall be reported to the Zoning By-Law Enforcement Officer in writing before action can be taken and subject to the regulations set forth by the underlying Zoning By-Laws.

13.8 VIOLATION

The Zoning Enforcement Officer shall notify the owner and/or operator in writing specifying the nature of the violation, the procedures necessary to correct the violation and a schedule of compliance. In no event shall more than thirty (30) days be allowed for either compliance or finalization of a plan for long term compliance be allowed. Failure to comply will subject the owner and/or operator to all penalties outlined in the underlying Zoning By-Laws.

13.9 SEPARABILITY

It is the intention of the Town of Spencer that each separate provision of this Aquifer Protection Overlay By-Law be deemed independent of all other provisions herein and that, if any provisions be declared invalid by a court of competent jurisdiction, all other provisions herein shall remain valid and enforceable.

SECTION 14. FLOOD PLAIN DISTRICT

(Added 11/8/93 Art. 25)

14.1 PURPOSE

The purposes of the Flood Plain District are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics, and the flood storage capacity of the flood-plain, and to preserve and maintain the ground water table and water recharge areas within the flood plain.

14.2 DISTRICT DELINEATION

The Flood Plain District is delineated on the Spencer Flood Insurance Rate Map (FIRM), dated September 14, 1990, as Zones A, A 1-30 to indicate the 100 year flood plain. The precise boundaries of the District are defined by the 100 year flood elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study.

Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate it shall be relied upon to require compliance with this By-Law and the State Building Code.

14.3 BASE FLOOD ELEVATION AND FLOODWAY DATA

1. Floodway Data. In Zone A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

14.4 NOTIFICATION OF WATERCOURSE ALTERATION

Notify, in a riverine situation, the following of any alteration or relocation of a watercourse:

Adjacent Communities

Bordering States

NFIP State Coordinator
Massachusetts Office of Water Resources
100 Cambridge St.
Boston, MA 02202

NFIP Program Specialist
FEMA Region I, Rm. 462
J. W. McCormack Post Office & Courthouse
Boston, MA 02109

14.5 USE REGULATIONS

1. Reference to Existing Regulations

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- a. Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 2102.0, "Flood Resistant Construction");
- b. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- c. Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);
- d. Coastal Wetlands Restriction, DEP (currently 302 CMR 4.00);
- e. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);
- f. Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

2. Other Use Regulations

1. Prohibit man-made alteration of sand dunes within Zones V1-30, VE and V which would increase potential flood damage.
2. Review all subdivision proposals to assure that: a) such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.

14.6 PERMITTED USES

The following uses of low flood-damage potential and causing no obstructions to flood flows shall be permitted provided they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses
3. Outdoor recreational uses, including fishing, boating, play areas, etc.
4. Conservation of water, plants, wildlife
5. Wildlife management areas, foot, bicycle, and/or horse paths
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises
7. Buildings lawfully existing prior to the adoption of these provisions.

14.7 SPECIAL PERMITS

No structure or building shall be erected, constructed, substantially improved, reconstructed (except as provided in Section 14 above), or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted by Board of Appeals. Said Board may issue a special permit hereunder (subject to other provisions of this By-Law) if application is compliant with the following provisions:

1. The proposed use shall comply in all respect to the provisions of the underlying District in which the land is located.
2. Within 10 days of the receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, and Board of Health. Final action shall not be taken until reports have been received from the above Boards or until 35 days have elapsed.
3. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited in the floodway unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood.
4. The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety, and welfare of the public and occupants of the proposed use.

14.8 DEFINITIONS

AREA OF SPECIAL FLOOD HAZARD is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE or V.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means floodplain district.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and if appropriate, corresponding water surface elevations or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

NEW MANUFACTURED HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

ONE-HUNDRED YEAR FLOOD see **BASE FLOOD**

REGULATORY FLOODWAY see **FLOODWAY**

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

START OF CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

ZONE A means the 100-year flood plain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

ZONE A1 – A30 AND ZONE AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONES B, C and X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

SECTION 15. RESIDENTIAL BUSINESS OVERLAY DISTRICT

(Added 12/2/97 Article 36)

15.1 DELINEATION OF RESIDENTIAL BUSINESS OVERLAY DISTRICT

Beginning at the end of the Central Business District as it extends from Route 9 Northerly down Route 31, aka Pleasant Street, aka North Spencer Road at the Northwesterly point of intersection at a depth of 200 feet back from the Mass. State Highway Layout or from the Westerly line of Route 31 in the event any portion of Route 31 is without a Mass. State Highway layout and continuing North along said layout or the Westerly line at a continuing depth of 200 feet to the Spencer/Paxton town line, returning Southerly along the opposite side of the Mass. State Highway layout or the Easterly line of Route 31, Pleasant Street and North Spencer Road the same continuous depth of 200 feet to the Southeasterly point of intersection beginning with the Central Business District as it extends from Route 9.

15.2 USES ALLOWED IN RESIDENTIAL BUSINESS OVERLAY DISTRICT

Accessory retail use of an artisan or craftsperson shall be accessory to owner-occupied dwelling unit of said artisan or craftsperson. Said retail use shall be allowed in principal and/or accessory structure(s) and shall not exceed 35% of the principal structure. Retail sales area shall not exceed 800 sq. ft. including all structures. 50% or more of all retail items shall be produced on the premises. Such uses shall only be allowed by Special Permit from the Zoning Board of Appeals.

15.3 Such allowed uses in Residential Business Overlay District shall be in addition to all legal uses as defined in areas in 15.1.

SECTION 16 WIRELESS DATA TRANSFER FACILITIES REGULATIONS

(Added 10/23/2000)

16.1 PURPOSE AND INTENT

The purpose of this section is to establish a bylaw that regulates wireless data transfer facilities such that these services may be provided with the minimum harm to the public health safety, and general welfare.

This bylaw has been created to:

16.1.1 Protect the general public from hazards associated with wireless data transfer facilities.

16.1.2 Minimize visual impact from wireless data transfer facilities.

16.1.3 Prevent adverse impact on local property values.

16.1.4 Improve the ability of the carriers to maximize coverage while minimizing adverse impact on the community.

This section is not intended to apply to satellite dishes or antennas used exclusively for residential use.

16.2 CONSISTENCY WITH FEDERAL LAW

These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:

16.2.1 They do not prohibit or have the effect of prohibiting the provision of personal wireless services.

16.2.2 They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

16.2.3 They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

16.3 EXEMPTED WIRELESS DATA TRANSFERS USES

This bylaw specifically exempts the following wireless communications facilities: police, fire, ambulance, and other emergency dispatch; citizen band radio. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, are exempt, provided that:

16.3.1 The tower is not used or licensed for any commercial purpose.

16.3.2 The tower shall be removed upon loss or termination of said FCC license.

16.3.3 No personal wireless data transfer facility or repeater shall be considered exempt from this bylaw for any reason whether or not said facility or repeater is proposed to share a tower or other structure with such exempt uses.

16.4 DEFINITIONS

ABOVE GROUND LEVEL (AGL): A measurement of height from the natural grade of the site (prior to development) to the highest point of the structure.

ACT: The Communications Act Of 1934 as amended from time to time, including the Telecommunications Act Of 1996, and includes future amendments to the act of 1934 and 1996

ADEQUATE CAPACITY: Capacity is considered to be adequate if the grade of service is p.05 or better for at least 50% of the days in the preceding 180 calendar days prior to the date of the application, measured using direct traffic measurements of the wireless data transfer facility in question, where the call blocking is due to frequency contention at the antenna(s).

ADEQUATE COVERAGE: The applicable PGA or SPGA will determine what is adequate coverage from time to time based on evidence presented, which may include but shall not be limited to the then current standards and government regulatory standards or materials.

ALTERNATIVE TOWER STRUCTURE: Structures, including but not limited to, man made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antenna or towers.

ANSI: The American National Standards Institute.

ANTENNA: The surface from which wireless radio signals are sent or received by a personal wireless data transfer facility, and which are attached to a tower or other structures.

ANTENNA HEIGHT: The vertical distance measured from the base of the support structure at the grade to the highest part of any antenna.

ANTENNA SUPPORT STRUCTURE: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting or receiving of data.

AVAILABLE SPACE: The space on a tower or structure to which antennas of a telecommunications provider are able to be attached, both structurally and functionally.

BASE STATION: The central radio transmitter/receiver that maintains communications with data transmission/reception devices in a given range.

CAMOUFLAGED FACILITY: A wireless data transfer facility that is disguised, hidden, part of an existing structure or proposed structure, or placed within an existing or proposed structure.

CARRIER: A company that provides wireless services.

CELL SITE: The location at which communications equipment is located for each cell.

CO-LOCATION: The use of a single mount on the ground by more than one carrier (vertical co-location) and/ or several mounts on an existing building or structure by more than one carrier.

COVERAGE PLOT (DATA MAPPING): Defined as depicting on a map, by graphical (colors, shading, or symbols) means to show actual or predicted values of signal-coverage parameters in order to establish adequacy of service.

dBm: The expression of power level measured in decibels (dB), referenced to one (1) milliwatt.

dBu: The expression of voltage level measured in decibels (dB), referenced to one (1) microvolt.

dBV: The expression of voltage level measured in decibels (dB), referenced to one (1) volt.

DATA: Information or “Intelligence” typically transmitted from one point to one or more points.

DATA MAPPING: See coverage plot

DISTANCE: Shall be measured on a horizontal plane.

DISH ANTENNA: Any antenna that meets the following criteria: a unit that does not and shall not exceed a diameter (using largest linear measurement) to surface area ratio of 1 to 0.75 per individual antenna element.

EMF (ELECTRO-MAGNETIC FIELD): The collective electrical and magnetic fields produced by wireless transmitters.

EMI (ELECTRO-MAGNETIC INTERFERENCE): Interference in signal transmission or reception caused by the radiation of electrical and magnetic fields (includes RFI).

ERP (EFFECTIVE RADIATED POWER): The product of the antenna power input and the numerical equal antenna power gain.

FCC (FEDERAL COMMUNICATIONS COMMISSION): The government agency responsible for regulating telecommunications in the United States.

FCC 96-326: A report and order that sets new national standards for emissions from FCC-regulated transmitters. This report and order is now contained within Title 47 Regulations, Section 1, 51.1307.

FALL ZONE: The area on the ground within a prescribed radius from the base of a personal wireless data transfer. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FREQUENCY: A measure of the repetitive energy, as one or more waves per second, in an electrical or light wave informational signal. A signal's frequency is stated in either cycles per second or Hertz (Hz).

HERTZ (Hz): A measurement of the basic unit of frequency, equivalent to one "wave" or cycle per second.

LICENSED CARRIER: A company authorized by the FCC to construct and operate a wireless data transfer facility.

MONITORING PROTOCOL: The testing protocol, initially the Cobbs Protocol, which is used to monitor the emissions from existing and new wireless data transfer facilities and repeaters upon adoption of this bylaw. The applicable PGA or SPGA may, as technology changes, require, by written regulation, the use of other testing protocols. A copy of the monitoring protocol shall be on file with the Board of Selectmen and the Town Clerk.

MOUNT: The structure or surface upon which antennas are mounted, including the following four types of mounts

- 1) Roof-mounted. Mounted on the roof of a building
- 2) Side-mounted. Mounted on the side of a building
- 3) Ground-mounted. Mounted on the ground
- 4) Structure-mounted. Mounted on a structure other than a building

NEPA: The National Environmental Policy Act of 1969 - an act of Congress that requires federal agencies to take into consideration the potential environmental effects of a particular proposal such as the construction of a radio station.

OFF PEAK: The periods of time (usually after the business day or weekends) during which carriers offer discounted airtime charge.

PEAK: The period of time (usually the business day) during which wireless customers can expect to pay full service rates

PGA (Permit Granting Authority): The Inspector of Buildings is the Officer vested with the authority to issue Permits for construction, installation, and operation of a Wireless Data Transfer Facility.

PICOCELL: A wireless base station with extremely low output power designed to cover an extremely small area, such as one floor of an office building.

RF RADIO FREQUENCY: A frequency well above the range of human hearing

RF ENGINEER: A Massachusetts Registered Engineer with demonstrated expertise in electrical or microwave engineering, specifically the study of radio frequencies.

RFI (RADIO FREQUENCY INTERFERENCE): Interference in signal transmission or reception caused by the transmission of radio frequency radiation.

RFR RADIO FREQUENCY RADIATION: The emissions from wireless data transfer facilities.

REPEATER: A receiver/relay transmitter designed to provide service to areas that are not able to receive adequate coverage directly from a base.

SCENIC VIEW: A scenic view is a wide angle or panoramic field of view and may include natural and/ or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen traveling along a roadway, waterway or path and may be to a far away object or a nearby object.

SECURITY BARRIER: A locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass; this area shall include the base of the structure, all equipment shelters and the outreach of any antennas and/or panels so as to prevent falling ice, etc., from harming someone below.

SEPARATION: The distance between one carrier's array of antennas and another carrier's array.

SHIELDING RF (Electronic): The use of a particular material and/or technique to shield an electronic component or circuit from the effects of external electric or magnetic fields.

SHIELDING (Aesthetic): The use of a particular material and/or technique to reduce the visual impact of an electrical component or circuit.

SPGA (Special Permit Granting Authority): The Zoning Board of Appeals is vested with the authority to issue Special Permits for construction, installation, and operation of a Wireless Data Transfer Facility.

TELECOMMUNICATIONS (Wireless Data Transfer): Commercial and/or non-commercial mobile services, licensed and/ or un-licensed wireless services, and personal wireless service. Said services to include but are not limited to, cellular services, Personal Communications Services (PCS), specialized mobile radio services, paging and broadcasting services, and includes conventional wired communication lines. The FCC regulates these services.

TELECOMMUNICATIONS PROVIDER: An entity, licensed by the FCC, to provide telecommunications services to individuals and/or institutions

TOWER: Any self-supporting or guyed structure that is designed and constructed primarily for the purpose of supporting one or more antennas, and associated equipment, and includes but not limited to, lattice and monopole type towers.

WIRELESS: A term describing radio based systems that allow transmission of data through the air without a physical connection.

WIRELESS DATA TRANSFER FACILITY: Transmission, monitoring or receiving antennae systems, their support structure and any peripheral attached thereto, that allow transfer of data through the air without a physical connection. It does not refer to the structures housing the electronic systems necessary to operate the antennae.

16.5 USE REGULATIONS

No wireless data transfer facility shall be placed, modified or constructed except as set forth below.

16.5.1 allowed use of existing facilities and structures

16.5.1.1 A wireless data transfer facility may be located by an application of a building permit on any municipal facility or structure, any building, or existing wireless telecommunication tower or pole or utility transmission tower, smokestack, steeple, water tank provided the ancillary equipment of the wireless data transfer facility may not extend higher than the highest point of the building or structure on which the facility will be installed and shall be made of such materials or painted so as to blend in appearance to the extent practicable with the building, structure or landscape upon which it is to be installed.

16.5.1.2 Any existing tower or pole may be replaced with a new tower or pole of equal or greater structural capacity by application for a building permit, provided that the original tower or pole is removed within 60 calendar days after the erection of the replacement tower or pole and provided that the replacement tower or pole is not greater in height than the original tower or pole. If the Applicant can demonstrate to the satisfaction of the PGA that an increase in height of the tower or pole is in the best interests of the Town of Spencer, the PGA may allow for an increase in height of the new tower or pole of not more than 20 feet without Application for a Special Permit. The replacement structure installed shall be made of such materials and/or painted so as to blend in appearance to the extent practicable with the building or structure or landscape upon which it is to be installed

16.5.1.3 Any modification to an existing, or new, wireless data transfer facility shall comply with all provisions of sections 16.8 through 16.12 of this bylaw.

16.5.2 New facilities and structures for wireless data transfer facilities

16.5.2.1 A new wireless data transfer facility may be located in any zoning district upon the grant of a special permit from the SPGA in accordance with the criteria and provisions established under this bylaw.

16.6 APPLICATION PROCEDURE FOR AN ALLOWED USE APPLICATION

16.6.1 An application for building permit for an allowed use facility shall be submitted to the inspector of buildings who may forward copies of such application to such other municipal officer(s) and/ or board(s), if any as may be designated by the town administrator to assist in the reviewing of the application.

16.6.2 The application shall contain a description of any/ all proposed maintenance and security for the proposed facility.

16.6.3 The PGA may require as a condition on the application for such wireless data transfer facility, a requirement for the posting of a bond at the value equivalent to the estimated removal cost for the removal of such facility at such time as it ceases to be a wireless data transfer facility as stipulated in General Requirements 16.11 of this Bylaw.

16.6.4 The application shall be approved or denied within 30 days of the receipt of the completed application. Failure to act on the completed application within 30 days of receipt constitutes denial. Any such application that is otherwise denied shall be in writing stating said reason for denial.

16.7 PROCEDURE FOR A SPECIAL PERMIT USE APPLICATION

A special permit application to the SPGA shall contain the following information:

16.7.1 Proof of Need: The Applicant shall submit written statements that explain the following:

16.7.2 How the proposed Wireless Data Transfer Facility is designed to minimize any adverse visual or economic impacts on abutters and other Parties of Interest.

16.7.3 Why the proposed Wireless Data Transfer Facility cannot be located on an existing Wireless Data Transfer Facility.

16.7.4 Why the proposed Wireless Data Transfer Facility cannot be located at any other practicable available site that is less visible to the general public due to technical requirements, topography or other unique circumstances.

16.7.5 That the proposed Wireless Data Transfer Facility is not designed any larger than or higher than the minimum size and height necessary to accommodate its anticipated future use and cannot be further reduced in height due to technical requirements, topography or other unique circumstances.

16.7.6 How the proposed Wireless Data Transfer Facility is sited in such a manner that it is suitably screened and, to the extent possible, not visible from residential buildings or public streets within 500 feet.

16.7.7 That the proposed Wireless Data Transfer Facility is colored so that it will, as much as possible, blend in with its surroundings when viewed from residential buildings or public streets within 500 feet; using, if possible, different colors to blend in the facility as invisibly as possible with the landscape or buildings on the ground and the sky above the tree or building line.

16.7.8 How the proposed Wireless Data Transfer Facility is designed to accommodate the maximum number of users technically practical, but not less than 3 users.

16.7.9 That the proposed Wireless Data Transfer Facility is necessary because the owner of an existing Wireless Data Transfer Facility will not permit the Applicant to place an additional Wireless Data Transfer Facility in the same location.

16.7.10 That the proposed Wireless Data Transfer Facility is in compliance with applicable Federal Aviation Administration, Federal Communication Commission, the Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health, and any other Massachusetts or Federal requirement for Wireless Data Transfer Facilities and providers that from time to time may be imposed.

16.7.11 Compliance shall be demonstrated by submission of letters from the above named entities and by submission of a copy of the FCC license issued to Applicant for the service area that includes the Town of Spencer.

16.8 PLANS TO BE SUBMITTED WITH A SPECIAL PERMIT USE APPLICATION

Plans shall be legibly drawn to fully detail and explain the intention of the Applicant. All plan sheets shall be drawn at a standard scale (i.e. 1 inch = 20, 40, or 50 feet) and shall include a reasonable numbering system with an appropriate title block, north arrow, and legend identifying any representative symbols used on the sheet in question. The plans shall include at least the following information as described in the Planning Boards Plan Requirements and further prescribed below, such that Each Plan Sheet shall show:

General and Natural Site Characteristics:

16.8.1 Any special features including, but not limited to, stone walls, fences, wells, historic structures, and historic buildings.

16.8.2 Site features such as, but not limited to, flood plains, waterways, drainage courses, and ledge outcroppings.

16.8.3 Existing and proposed contours of the land shown at two (2) foot intervals unless otherwise required by the Conservation Commission. Topography shall be referenced to the National Geodetic Vertical Datum of 1929 with the location and the elevation of the starting benchmark plus at least two (2) additional benchmarks on the site.

16.8.4 Location and results of any field tests to determine the maximum groundwater elevation, and all rivers, wetlands and associated buffer zone boundaries. Wetlands are defined as those areas subject to the provisions of the “Wetlands Protection Act”, MGL, Ch. 131, Section 40. In addition, any additional Wetlands or River Regulations that the federal government, the State of Massachusetts, or the Town of Spencer have passed are hereby included.

Site Improvements:

16.8.5 Outline of footprint of any existing or proposed building or structure with identification and its finished floor elevation. The final disposition of any existing building or structure, whether it is to remain, be removed, or be altered, shall be noted.

16.8.6 All driveway entrances dimensioned and a cross-section of the driveway shown so that compliance with the access requirements of the bylaw may be determined. Any driveway intended to be used as a “common” driveway shall be so identified. The size of the largest vehicle expected to use the site shall be noted. All drives and entrances shall be designed to accommodate the designated size of the vehicle. The smallest size vehicle for the design shall be such that fire trucks may maneuver on the site, as determined by the Town of Spencer Board of Fire Engineers.

16.8.7 All parking facilities with proper dimensions.

16.8.8 Outdoor lighting details for low intensity security lights.

16.8.9 Location and type of storm-water drainage facilities including notes on the construction material and any pipes, culverts, catch basins, or any other system component. Sufficient information relating to the drainage system components (rim and invert elevations, pipe slopes, amount of cover, etc.) shall be shown so that the operations of the system can be evaluated. Any drainage ponds intended to be constructed shall be shown fully dimensioned.

16.8.10 Location of any storage tanks for fuel or other chemical storage, including the tank type, capacities, and dimensions.

16.8.11 Location and type of existing and proposed water services to serve the facility (including abandoned wells). If the site is to utilize an on-site well, its proposed location must be shown in addition to its setbacks from any building, structure, or sewage disposal system. If public water services are to be utilized, then the water main that will service the site must be shown and identified.

16.8.12 All fire hydrants on the site or off the site but within 500 feet of the principal building on the site. If no fire hydrants are located within 500 feet of the principal building on the site then a note shall appear clearly explaining how the Applicant will provide fire protection to the site. The location of any proposed municipal fire alarm boxes or other warning systems and the proposed fire lanes shall be clearly shown and identified. Any underground conduit for municipal fire alarm connections shall be shown.

16.8.13 The location and type of any other underground utilities including but not limited to electric, gas, telephones, or cable television services. Any emergency power facilities should also be shown.

16.8.14 Typical detail of a proposed catch basin, diversion box, emergency slidegate, manhole, headwall, retaining wall, subdrain, waterway, leaching basin, drainage pond, or other similar construction, if any.

Erosion and Sediment control Plans:

16.8.15 The Plan shall show adequate erosion and sediment control measures during and after construction. Control measures such as hydroseeding, berms, interceptor ditches, terraces and sediment traps shall be put into effect prior to the commencement of each increment of the development/ construction process.

16.8.16 A note on the Plan shall state that the developer / owner / lessee is required to clean up any sand, dirt or debris that erodes from the site onto any public street or private property, and to remove any silt or debris that enters any existing drainage system including catch basin sumps, pipe lines, manholes, and ditches.

The following additional plans may be required:

16.8.17 Landscape Plan - Landscaping information must be shown on a separate plan sheet or sheets. In addition to showing landscape treatments planned for the site, the Landscape Plan shall contain general site features such as lot lines, existing and proposed structures, parking areas, curbs, walkways, loading areas, land contours, water bodies, wetlands, streams, ledge outcroppings, and large boulders so that it may be easily related to the other plans.

16.8.18 Screening - The Plan shall show the methods, plant materials, fencing, and other treatments that will be employed to ensure that the Wireless Data Transfer Facility is not visible from residential buildings on public streets within 500 feet. Parking that faces public ways and residential zones or uses shall also be screened.

16.8.19 Planting Table - The botanical and common name of each species, its height (at planting), its spread (at maturity) and the quantity intended to be planted shall be listed in a table along with the symbols used to represent the plants on the plan.

16.8.20 Landscaping Details - A typical detail of a tree well, tree planting, and specialty planting area, if applicable.

16.8.21 Limits of Work - Any area where existing conditions may reasonably be expected to be disturbed during construction shall be shown and identified on the Landscape Plan.

16.8.22 Perimeter of Trees - The perimeter of any existing wooded areas on the site shall be shown. Existing wooded areas intended for preservation shall be noted. The location, size, and proposed fate of any existing trees larger than 16 inches in diameter shall be shown.

16.8.23 Camouflage - The plan shall include a colored rendering of the proposed Wireless Data Transfer Facility legibly drawn at a standard architectural scale, as appropriate, showing the methods and treatments that will be employed to ensure that the Wireless Data Transfer Facility will blend in with its surroundings when viewed from residential buildings on public streets within 500 feet.

16.8.24 Visibility - The Plan shall include a topographic map showing areas where the top of the proposed Wireless Data Transfer Facility will be visible. To allow the SPGA to make its determination, the SPGA may require that the Applicant provide a visibility impact test. Locations of the photographs shall be shown on the map.

16.8.25 Plan Notes - Plan Notes shall be provided that: 1.) forbid the use of fill materials containing hazardous materials, 2.) require the marking of the limits of work in the field prior to the start of construction or site clearing, 3.) require the cleaning of catch basin sumps and storm water basins following the construction and annually thereafter, 4.) restrict the hauling of earth to or from the site to the hours of 8 a.m. and 4 p.m. on weekdays if earth materials are intended to be brought to or from the site, 5.) describe the materials to be used in the construction of impermeable surfaces such as sidewalks and driveways.

16.9 DRAINAGE CALCULATIONS TO BE SUBMITTED WITH A SPECIAL PERMIT USE APPLICATION

Storm drainage runoff calculations used for the drainage system design must be prepared by and display the seal of a Registered Professional Engineer and must support the sizing of all drainage structures and pipes.

16.9.1 These calculations must be based on a recognized standard method (usually the Rational or Soil Conservation Service Methods). The calculations must contain a written summary explaining the rationale of the design so that a lay person can understand the basic design approach and its validity for the site in question. Furthermore the calculations should be fully documented including copies of charts or other reference sources to make review possible.

16.9.2 The pre- and post-development runoff rates must be provided. The use of computer generated reports is acceptable, however, the source of the software should be identified. Design of the storm drainage system can generally be based on a 10-year storm event; however, the system design shall not result in a serious flood hazard during a 100-year storm.

16.10 ADDITIONAL INFORMATION

The application may contain whatever additional information the Applicant feels is necessary to properly inform the SPGA about the development including legal opinions, copies of deeds, historical data, studies, and reports.

16.10.1 The SPGA is empowered to require any information in addition to that specifically required by the Bylaws of the Town of Spencer. The SPGA will require the Applicant to supply additional information if it finds such information is necessary to properly act upon the application in question.

16.11 GENERAL REQUIREMENTS

16.11.1 No building or structure shall be permitted within a 200-foot radius of the tower base except for a building or structure required to operate the facility. The purpose of this condition is to protect the public in the event of tower failure or an "Act of God".

16.11.2 A 70-foot by 70-foot area around the tower is to be contained by a ten-foot high fence of chain link construction with a solid bottom rail as close to natural grade as possible.

16.11.3 The access driveway shall be a minimum of 12 feet wide.

16.11.4 The access driveway shall have a gate at the entrance and be locked at all times, except when work or maintenance is being performed at the site.

16.11.5 The facility shall have no artificial lighting on the tower to maintain the nighttime aesthetic appearance of the area unless required by another State of Massachusetts or Federal Agency regulation.

16.11.6 The Applicant shall make every good faith effort consistent with business practices of the specific Applicant(s) to provide tower space to the Town of Spencer, and install for the Town of Spencer reasonable Town owned or operated public safety communication equipment that is deemed necessary to be placed on the tower to improve public safety in the Town of Spencer. The Town of Spencer shall submit such request to The Applicant for approval, which approval shall not be unreasonably withheld.

16.11.7 The site shall be built to limit the ability of the layperson from climbing the tower. This is to minimize the chance of unauthorized tower ascent.

16.11.8 It is the responsibility of the Applicant and/or its successors in interest and/or the owner and/or its successors in interest to remove the tower, including the base, at the expense of the Applicant and/or its successors and/or the owner and/or its successors in the event that the tower is not occupied, as the Special Permit states, for 12 consecutive months.

16.11.9 The Applicant and/or its successors in interest and/or the owner and/or its successors in interest, agree to allow the Town of Spencer access to the property to remove the tower and to return the site to its original condition in the event the use of the tower is discontinued and the tower is not removed in accordance with Condition 16.11.8, above.

16.11.10 The Applicant shall post a bond in the amount of \$50,000 with the Town of Spencer, Town Administrator, to enable the Town of Spencer to remove the tower in the event that use of the tower is discontinued and the tower is not removed by the Applicant and/or its successors in interest and/or the owner and/or its successors in interest. The bond shall be for thirty years from the date that the tower begins to operate. The amount of the bond shall be adjusted annually on January 1, to account for any change in the consumer price index for Worcester, Massachusetts standard metropolitan statistical area. The purpose of the condition is to ensure that the Town will have sufficient funds available to remove the tower in the event that the tower is not removed by the Applicant and/or its successors in interest and/or the owner and/or its successors in interest.

16.11.11 On Application for Special Permit, or renewal of a Special Permit, all taxes must be certified as having been paid by the Town Collector.

16.11.12 A copy of filings with the Federal Communications Commission and Massachusetts Department of Health as required under 105 CMR 122 shall be submitted to the Planning Board and the Board of Health prior to the Applicant obtaining a building permit. These filings shall include documentation of maximum exposures from the proposed operation as per the formulas listed in the regulations under “Non-Ionizing Radiation Limits for the General Public from Non-Occupational Exposure to Electromagnetic Fields; Employees from Occupational Exposure to Electromagnetic Fields; and Exposure from Microwave Ovens.”

16.11.13 The SPGA may waive any of the provisions of this Bylaw upon a finding at the public hearing that such waiving of the provision is in the best interest of the public safety and welfare. The SPGA shall make public the reasons for such a finding and shall record these reasons in the minutes of the public hearing.

16.12 SAFETY STANDARDS

16.12.1 All equipment proposed for a wireless data transfer facility shall comply with the current FCC standards for radio frequency radiation emissions per the FCC *Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation*.

16.12.2 No hazardous waste shall be discharged on the site of any wireless data transfer facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials.

16.12.3 Ground mounted equipment for wireless data transfer facilities shall not generate noise in excess of 50 db at the property line. If there be any question as to the noise level being generated, the town may hire an acoustical engineer to verify the noise level at the carriers expense.

16.13 MONITORING

After the wireless data transfer facility is operational, the applicant shall submit, within 90 days of beginning operations, and at bi-annual intervals from the date of issuance of the special permit, existing measurements of RFR from the wireless data transfer facility. Such measurements shall be signed and certified by an independent RF engineer, stating that the RFR measurement are accurate and meet FCC guidelines.

16.14 MAINTENANCE

The applicant shall maintain the wireless data transfer facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and equipment and any security barriers, and maintenance of buffer areas and landscaping.

16.15 PERMIT EXPIRATION/ RENEWAL

All Permits for wireless data transfer facilities will expire 24 months from the date of grant, and renewal to the PGA or SPGA shall include the Applicant's name, business address, current as-built plan with summary of changes, and certification from the Town Collector that all relevant taxes have been paid.

16.16 SEVERABILITY CLAUSE

The invalidity of any section or provision of this article shall not invalidate any other section or provision hereof.